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EXTRAORDINARY

भाग II—खण्ड 3—उपखण्ड (ii)

PART II—Section 3—Sub-section (ii)

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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।

Separate paging is given to this Part in order that it may be filed as a separate compilation.

ELECTION COMMISSION, INDIA NOTIFICATION

New Delhi, the 14th February 1967

S.O. 597.—In pursuance of sub-section (6) of Section 116A of the Representation of the People Act, 1951 as continued by section 63 of Representation of the People (Amendment) Act, 1966, the Election Commission hereby publishes the decision of the High Court of Judicature at Allahabad given on the 19th December, 1966 on the appeals and writ petitions from the order dated the 29th August, 1964 of the Election Tribunal, Allahabad.

First Appeal No. 305 of 1964. Connected with First Appeals Nos. 316, 326, 328, 341, of 1964 and Writ Petitions Nos. 494, 495, 496, 5173, 5174, 5215 and 5286 of 1964.

HON'BLE B. DAYAL, J.

HON'BLE J. N. TAKRU, J.

(Per Hon. B. Dayal, J.)

All these connected matters arise out of the election of 34 Gonda Parliamentary Constituency held in 1962, in which the respondent Shri Ram Ratan Gupta (Congress) was declared elected after a recount and Shri Narain Dandekar (Swatantra) was a candidate who obtained the next largest number of votes at the recount although at the first count he was found to have obtained the largest number of votes. The result after the recount was declared on the 11th of March, 1962. Election Petition No. 339 of 1962 was filed by Shri Narain Dandekar on the 23rd of April, 1962. Another Election Petition No. 340 of 1962 was also filed by Shri Gomti Prasad but since appeal No. 316 of 1964 arising out this petition has not been pressed before us, we need not say anything further about it and this appeal No. 316 of 1964 is dismissed and parties will bear their own costs.

In the Election Petition Shri Narain Dandekar contended that there had been systematic tampering of votes after the first count and before the recount and as a result of this, a large number of votes which had been counted at the first count in his favour, were found to be invalid on account of multiple marking. Some votes which had been previously rejected as containing no mark, were tampered with the subsequently found to have marks for Shri Ram Ratan Gupta. Consequently, these tampered marks made subsequently after the first count should have been ignored and if that was done, the result would have been that Shri Narain Dandekar would have succeeded in obtaining the largest number of votes. On the other hand, the contention on behalf of Shri Ram Ratan Gupta was that there was no question of tampering, that there were large number of mistakes in the first count and when these mistakes were checked at the recount, the correct result was arrived at and Shri Ram Ratan Gupta was rightly declared elected.

The Tribunal, after considering the case of both the parties in detail, came to the conclusion that the circumstances, with which I will deal in detail later, led to the inevitable conclusion that there had been tampering of votes after the first count and before the recount. According to the Tribunal, there was no doubt that at least some of the votes had been tampered with and consequently in the circumstances of the case it was right to assume that all the votes which had been counted for Shri Narain Dandekar at the first count must be treated to have been validly cast in favour of Shri Dandekar and the additional marks observed on those votes at the time of the recount must be ignored, as also those votes which had been rejected at the first count for having no mark but were subsequently found to have marks in favour of Shri Ram Ratan Gupta must also be treated as invalid votes. While considering the circumstances the learned Tribunal made remarks against the officers, who were in charge either of counting or of safe preservation of ballot papers and recommended to the Election Commission for action to be taken against them under section 137 of the Representation of the People Act, 1951. On these findings, the Tribunal allowed the election petition of Shri Narain Dandekar, set aside the election of Shri Ram Ratan Gupta and declared Shri Dandekar to be duly elected. Against that decision, all these cases have arisen in this Court.

Appeal No. 305 of 1964 is the main appeal filed by Shri Ram Ratan Gupta against the order setting aside his election and declaring Shri Dandekar to be duly elected. I have already stated that appeal No. 316 of 1964 filed by Shri Gomti Pd. also against that election has not been pressed and has been dismissed accordingly. Shri C. M. Nigam who was the returning officer has filed appeal No. 326 of 1964 and also writ petition No. 495 of 1964 against the remarks made in the judgment of the Tribunal against him. Shri A. S. Misra, Assistant returning Officer has also filed appeal No. 328 of 1964 and writ petition No. 494 of 1964 against the remarks made against him. Shri Krishna Madho Saran, the Treasury Officer has filed appeal No. 341 of 1964 and writ petition No. 5174 of 1964. Shri Kalicharan Jauhari, Nazir Sadar of the Collectorate at Gonda has filed only writ petition No. 5215 of 1964. Shri Maqbool Husain, Election Inspector has filed writ petition No. 5286 of 1964 as also Shri R. B. Jauhari, District Election Officer has filed writ petition No. 5173 of 1964 all against the remarks made against them. Apart from these officers against whom remarks have been made in the judgment of the Tribunal, the State of Uttar Pradesh has also filed writ petition No. 496 of 1964 as the Tribunal also made remarks which have given a cause to the State to have a grievance against the judgment. I first propose to deal with the main appeal filed by Shri Ram Ratan Gupta as all the relevant facts will have to be dealt with in that appeal. After disposing of that appeal, it will be convenient to deal with other appeals and writ petition filed by the officers and the State.

The Gonda Constituency consists of five assembly segments:

(i) Gonda East, (ii) Gonda West, (iii) Gonda North, (iv) Mahadeva and (v) Mankapur. The first counting of this Constituency took place on the 27th and 28th of February, 1962. At the time of this counting Shri Ram Ratan Gupta was noted as having obtained 80,902 votes while Shri Dandekar was noted as having obtained 82,478 votes. It is not necessary to mention the votes obtained by Shri M. H. Rajgir and Shri M. K. Sinha, who were the other two contesting candidates and who obtained much smaller number of votes. At this first count, the counting of Gonda East was done in a room called 'the combined office' in the Collectorate at Gonda while that of Gonda North was done in a Shamiana on the lawn of the Collectorate at Gonda. The counting thus of both these places went on simultaneously on the 27th February, 1962. On the next day, the 28th of February, 1962, the counting of Gonda West was taken up in the combined office, that of Mankapur in the Shamiana while that of Mahadeva was done in

another room called 'the meeting hall'. In these cases, we are mainly concerned with the counting that was done in the combined office because the largest number of votes that had been rejected on the recount happened to be in Gonda East which were counted on the 27th of February, 1962 and the rest in Gonda West which were also counted in this room on the 28th of February, 1962.

On behalf of Shri Ram Ratan Gupta, it has been contended that the conditions under which the counting took place in the room, called the combined office on the 27th of February, 1962 were such that a large number of mistakes, which had been discovered on recount cannot be said to be extraordinary. As the condition improved on the 28th of February 1962 when Gonda West was counted the mistakes were much less. But still the mistakes did take place on the 28th of February, 1962 also as all the difficulties had not been removed.

In this connection, a few figures are worth noting before starting considering the cases of the respective parties. At the first count, the total number of votes rejected was 7,076. Out of this, as many as 3,600 votes were rejected on account of having multiple marking. At the recount, 1,928 votes were rejected on account of multiple marking which had, on the first count, been counted for Shri Dandekar, out of this number of 1,928 as many as 1,791 votes had been wrongly counted in Gonda East alone, as appears from the chart (Ext. P-31) on the record. The lead of Shri Dandekar in the first count which was by 1,576 votes was completely overcome by this reduction in Gonda East, apart from other votes which Shri Dandekar lost in other segments and a few votes which Shri Ram Ratan Gupta gained at the time of recount.

To explain this difference which happened at the two counts, the theory put forward by Shri Dandekar is that from the very beginning as soon as it appeared at the time of the first count that the lead of Shri Ram Ratan Gupta was dwindling away when the last segment of Mankapur was being counted where Shri Dandekar polled heavily, all the officers connected with the counting of votes as also with the safe custody of the ballot papers must have secretly combined to see that the ballot papers were so tampered with before the recount that Shri Ram Ratan Gupta the Congress Candidate got the largest number of votes. Although there is no direct evidence of tampering with the ballot papers, a large number of circumstances have been pointed out from stage to stage which, according to Shri Dandekar, unmistakably proved that all the officers concerned were not acting honestly and were acting deliberately with that aim. Upon those circumstances, an inference is drawn that the ballot papers must have been tampered with otherwise this result would not have happened.

On the other hand, on behalf of Shri Ram Ratan Gupta, evidence had been led to show that on account of the pressure of Raja of Mankapur on the voters and the sympathy of the voters with the Congress candidate, a large number of them decided to vote for more than one candidate and even though the Congress workers attempted to dissuade the voters from taking that attitude for they would spoil their vote, they did not seem to change their mind and that is why such number of votes were found to be spoiled on account of multiple marking. Even at the first count more than six thousand votes were rejected on that ground and it was also contended that the condition of the room (combined office) where the counting of the Gonda East took place on the 27th of February, 1962 was such that mistakes were bound to occur. According to Shri Ram Ratan Gupta, lighting arrangement was wholly insufficient, the room was badly congested and the parties agents did not get sufficient opportunity to see whether the ballot papers were being properly distributed to the candidates, so that there was no real check on what the counting clerks were doing. Coupled with this fact, some of the counting clerks and the Supervisors were also in sympathy with the Swatantra Party candidate as he was being supported by the Raja of Mankapur who had a great influence over the petty officials in the locality and who were acting as counting clerks and Supervisors. It is said that on account of these factors, a large number of invalid votes were counted for Shri Dandekar. It is pointed out that this was known to Shri Dandekar and his agents and that is why he had been strenuously opposing a recount from the very beginning and when it was finally decided that there would be a recount, he started clamouring that there was likely to be tampering for that was the only basis upon which he would escape the consequence of the discovery that a large number of votes had been counted for him which were bound to be rejected. I have now to consider these respective claims and I propose to start from the very beginning, event by event which according to one or the other party affects the result of the recount.

The first point for consideration is the condition of the combined office where the relevant counting was done on the 27th and 28th of February, 1962, at the time of the first count. This office was inspected by the Tribunal and the inspection-note is on the record. From this note, it appears that the room was

20'×35' the length being north and south. It was closed on all sides except towards the east. Towards the east there were three doors and beyond these doors there was a verandah. There was open space beyond the verandah. The only source of natural light into the room was from the east. From the evidence, it is also admitted that in this room at the time of the counting at the southern end there was the table of the Assistant Returning Officer. In front of his table extending towards the north, there were two rows of seven tables each and two tables were placed on either side of a door leading to the room on the west. There were four benches meant for seating the counting agents of the candidate. Two of them were placed towards the eastern wall between the three doors. One was against the western-wall of the room and another against the northern wall, both adjoining the north-west corner of the room. In this room there were four light-points. It is also admitted that the verandah towards the east was also closed by placing *Qanat* towards the eastern arches which were the main source of light. There is a controversy between the parties that on account of the closing of the verandah will the *Qanats*, the room had become very dark even during day and on the first counting day i.e., on the 27th of February, 1962, the lighting arrangement was insufficient. But according to the other side, there was no dearth of light during day and the natural light was sufficient to do the work of counting. Even at night, there was sufficient light. Both the parties have led evidence on this point. On behalf of the respondent-petitioner, four witnesses were produced to prove that there was sufficient light, P.W. 4 (Dasrath Pd. Shukla) is the first witness, who has deposed about this matter apart from the election agent of the respondent. The appellant also admits that Dasrath Pd. Shukla was one of the counting Supervisors on those dates. He has stated that either during day or during night he did not feel deficiency of light. He, however, admitted that two or three patromax lights were placed in the verandah which was to the east of the room at the time of the counting. The next witness is P.W. 5 (Sri Bahadur Singh). He stated in examination-in-chief that he did not find light to be insufficient. His presence, however, as a counting clerk has been challenged by the other side. The duty list which determined the names of persons who were to act at the time of the counting does not contain the name Sri Bahadur Singh but contains the name of Sheo Bahadur. It is contended that this witness was named mere'y 'Bahadur Singh' and 'Sri' had been added before this name in order to make his name similar to Sheo Bahadur who was in the duty list. The appellant has produced this Sheo Bahadur (R.W. 3). He has stated that he was the person who was appointed as Supervisor at the time of the counting. He has also stated that he knew Sri Bahadur Singh but he was not in the counting hall doing any work. From the evidence of P.W. 5 (Shri Bahadur Singh) it is pointed out that his statement intrinsically indicates that he was not in the counting hall otherwise he would not have made such a statement. In the first place, in paragraph 7 of his statement, he states that he did not know the name of the other clerk who was counting on his own table. He admitted that Sheo Bahadur Srivastava had signed the ballot papers as Supervisor on that table. In paragraph 17 he states. "The voting papers of the Assembly as well as of the Parliamentary Constituencies were separated. Both of us, that is, myself and the other clerk used to deal with the Assembly votes and thereafter that ballot papers of the Parliamentary Constituency." This is obviously a wrong statement. According to the instructions as well as according to the other evidence, after the ballot papers had been taken out of the ballot-box, one clerk used to deal with the Parliamentary votes and the other clerk was to deal with the Assembly votes. His statement clearly indicates that he did not know the procedure that was being followed in the counting hall. He has also stated in his cross-examination (paragraph 11) that lights were on since the beginning of the counting. In paragraph 12 he further stated that in the evening patromax lights were placed in the verandah which is also contrary to P.W. 6 and P.W. 7. I am, therefore, not prepared to place any reliance upon this witness. The next witness is P.W. 6 (Ram Niwas). He says that he was the counting clerk in the Gonda Parliamentary Constituency and did that work on the 27th and 28th of February, 1962. In his examination-in-chief he stated that he did not find the light insufficient. His presence in the counting hall was also challenged by the other side. He has stated in cross-examination (Paragraph 12) that he was the Basta Bardar in the record room. But in the duty list one Ramniwaj Singh was mentioned as the person to take part in the counting. This Ramniwaj Singh is described as the record-keeper. A Basta Bardar or the record-lifter could not have been described in the duty list as a record-keeper. R.W. 2 (Shri Mujtiba Husain) who was the clerk in the Judicial Magistrate's court at Gonda and was also a Supervisor at the time of counting, has clearly stated that he knew Ram Niwas who was the record-lifter in the Collectorate but he was not present in the counting-hall. This witness Shri Mujtiba Husain was the Supervisor at table No. 16 and P.W. Ram Niwas also claimed to have been a counting clerk at table No. 16. I am inclined to prefer the statement of R.W. 2 (Sri Mujtiba Husain)

and find that Ram Niwas did not act as counting clerk at table No. 16. He has also made several wrong statements in his cross-examination indicating that he was not in the counting-hall. In paragraph 13, he stated, "It is wrong to say that tables Nos. 15 and 16 were on either side of the door". This statement is definitely wrong. All other evidence in the case indicates that tables Nos. 15 and 16 were on either side of the door leading to the western room. He then states in the same paragraph (13) that there were no chairs in this space between the two rows of tables. But it is an admitted fact that the chairs of the Supervisors were placed towards this common passage left between the two rows of table. He then stated that the benches for the counting agents were placed by the walls on all the four sides of the room. This statement is again wrong. Admittedly, no bench was placed towards this southern wall of the room on which side the table of the Assistant Returning Officer expected. In paragraph 24 he has disclosed that he is a Bisain Thakur and Raja Sahib of Mankapur is also a Bisain Thakur and Shri Debi Datt Singh an employee of Raja Sahib of Mankapur was his cousin. It may be that he had been produced on account of that connection with Raja Sahib of Mankapur, who was in real control of the affairs of the Swatantra Party at Gonda. The last witness produced by the petitioner was P.W. 7 (Hanuman Pd.) In his examination-in-chief he stated that he worked as a counting clerk on the 27th and 28th February, 1962 in the combined office and was placed at table No. 14. He has stated that he did not find the light insufficient and the work was not hampered due to want of light. His presence in the counting hall was also challenged but I do not see sufficient reason to hold that his presence in the counting hall must be doubted. In paragraph 12 of his cross-examination, he stated that the patromax lamps were lighted and placed in the verandah after the tent wall was put up and the electric lights were on when the counting started in the room. When he was asked further as to why the artificial lights were on in day time when the natural light, according to him, was sufficient, he could not explain and merely said that he could not say why lights were on during day time. He also admits that when night came no bulbs were changed nor more powerful bulbs were placed in the room.

On the other hand, on behalf of the appellant, R.W.1 (Ramanath Misra) election agent of Shri Ram Ratan Gupta, (R.W.2) (Shri Mujtiba Husain) counting Supervisor, R.W.4 (Shri Achutanand Tripathi) counting clerk at the time of this counting, R.W.6 (Shri Parmanand Agnihotri) who was counting agent on behalf of Shri Ram Ratan Gupta and R.W.14 (Shri Bhagwati Pd.) clerk of Shri Gomti Pd. Vakil, Gonda who was acting as the counting agent on behalf of Shri Gomti Pd. have all stated that on account of the placing of the Qanat towards the east of the verandah, the light in the room had become very insufficient. Many people complained about the light and the Assistant Returning Officer informed them that efforts were being made to improve the light. In view of the fact that the petitioner's own witnesses have admitted that lights were on during day time and that the patromax lights were placed in the verandah even during day time which leaves no room for doubt that at least the natural light during day time was insufficient to carry on the work. To this extent at least, the witnesses produced by the petitioner were wrong in saying that the day light was sufficient to carry on the work. Apart from this oral evidence, there is also a document which had been summoned from the Nazir, Collectorate at Gonda. This is a slip dated the 27th of February, 1962. It starts with a note by one Shri B. S. Bark addressed to the Sardar Nazir and states: "I have been directed by Shri A. S. Misra to ask you to arrange for (i) six patromax (ii) four bulbs of 100 Wts and 150 Wts, each." Then follows a note by Shri Kalicharan Jauhari, Nazir Sadar. This note is addressed to the Inspector Elections and it says, "Kindly direct Shri Mohd. Jamil to fix four bulbs of 150 Wts. in the counting hall and two bulbs of 150 Wts. in the verandah at once as desired by Shri A. S. Misra, Returning Officer, Gonda—East Constituency. He is fixing bulbs in the lawn." Next after that is a note by Shri Maqbool Husain, Election Inspector. He says "Out of the twenty-five bulbs already given to you four bulbs may be fixed." Then the last note is by Shri K. M. Saran, Officer-in-charge, Nazarat. He addressed it to the Election Officer and stated, "I regret, Nazir Sadar has got no 150 Wts. bulb with him. All the twenty-five bulbs supplied by the Election Officer, have already been fitted at different points and they cannot be taken out. Please spare six bulbs of 150 Wts. each at once". According to the petitioner, this document is a forgery and had been procured subsequently in order to boost up the case of deficiency of light. Out of these Officers who had signed the slip Shri B. S. Bark and Shri Maqbool Hasan have not come in evidence. But Shri Kalicharan Jauhari and Shri K. M. Saran Officer-in-charge Nazarat have been produced. This document has been criticised on several grounds. In the first place, it is contended that there was no written complaint made to the Assistant Returning Officer about the deficiency of light and, therefore, there was no occasion for him to ask for better light. I am unable to see any force in this contention. If even an oral complaint is made to the Assistant Returning

Officer who himself saw the condition of light. He would naturally direct Shri B. S. Bark who was one of the Officers working in the room to ask the Nazir for the necessary arrangement of light. A written complaint was not necessary. I, therefore, see nothing improbable in Shri B. S. Bark writing to the Nazir, Sadar for the arrangement of six patromax lamps and four high-power bulbs. Naturally the gas lamps could not be placed inside the crowded room which would have produced, bad smell and made the working more difficult. Therefore, high-power bulbs were essential inside the room. The next criticism is that although Shri B. S. Bark wanted four bulbs of either 100 or 150 Wts. and patromax lamps yet the Nazir, Sadar while writing to the Inspector asked for fixing four bulbs of 150 Wts. In the room and two bulbs of 150 Wts. in the verandah and it is contended that the Nazir Sadar, could not possibly imagine that light was needed in the verandah when there was no mention of it in the note of Shri B. S. Bark. I am unable to see any force in this argument either. Since electric bulbs were likely to be arranged quickly the Nazir asked for 6 bulbs. The arrangement of patromax lamps was bound to take time. He, therefore, directed the Election Inspector to immediately place four, high power bulbs inside the room and two bulbs in the verandah. Moreover, the peon who had taken the slip to him must have given this necessary information that light was needed inside the room as well in the verandah. The Election Inspector thereupon asked the Sadar Nazir, to supply the necessary bulbs out of the twenty-five bulbs, which had been supplied by the Election department to the Sadar Nazir and the last note naturally explained the whole positions by saying that all the twenty-five bulbs that had been supplied were not of such high power and had otherwise been used already at essential points. They could not, therefore, be of any use for the purpose required. This note was made by Shri K. M. Saran, who was the Officer-in-charge of the Nazarat and the Officer naturally addressed that final note to the Election Officer who was incharge for arrangements of elections so that final information may reach him and he may make the ultimate arrangement. Thus in the document itself I see nothing improbable to indicate that this document was a forged one. Moreover, if it had been forged for the purpose of this case, there was no reason to involve so many persons in this note and it was also not difficult to support the other part of the case put forward on behalf of Shri Ram Ratan Gupta that ultimately arrangement was made for high power bulbs on the 28th of February, 1962, though it could not be made on the 27th of February, 1962. The note stops short after showing inability on the Nazarat to supply the necessary bulbs. In this connection the statements of these two witnesses Kalicharan Jauhari and Shri K. M. Saran have also been criticised. Shri Kalicharan Jauhari has been produced as R.W. 19. He was the Nazir Sadar in the Collectorate at Gonda. He stated in examination-in-chief that a peon brought a slip (Ext. W.R. 76) for light. He then wrote a note addressed to the Election Inspector and he proved that note and in his own signature. He then received a reply of Shri Maqbool Husain the Election Inspector. After receiving this note, he took it to the Officer-in-charge and therefore Shri K. M. Saran wrote out that last note. He also states that before taking the paper to Shri K. M. Saran, he had written out a note which he later struck out. In that note he had stated "Bulbs of only 75 Wts. were supplied and that I have no bulbs of 100 Wts. "But he admits that he cut out that note because it was factually wrong. The last note written by Shri K. M. Saran was in red ink. He proved that note by Shri K. M. Saran and he states that this note was sent by a peon to the Election Officer through Shri R. B. Jauhari through a peon who after some time returned it and informed him that the Election Officer was not available to him in the Collectorate compound. But the peon had met the Election Inspector who had told him that arrangement was being made for light. The witness then says that he received back the note and it remained with him. This statement of the Nazir has been criticised firstly on the point as to why he kept such a useless note all the time with him till it was summoned by the Tribunal. No explanation was asked from the witness and, therefore, the criticism has no justification. It may be that after receiving the note, he put it in his desk and it remained lying there till it was demanded or it may be that he filed up every paper which he received in connection with the election. In cross-examination he has explained that he had been supplied 25 bulbs of 75 wts. for purposes of the use in connection with the counting. He had used these bulbs before the demand came. It was the duty of the election office to supply the necessary articles at the Nazarat which was also helping in making arrangements and, therefore, when the need came to him he asked the Inspector of Elections to make the necessary arrangements. He stated that he had kept no note how the twenty-five bulbs supplied to him were utilised. He was asked when he had nothing to do with the arrangement for elections why did he not ask Shri B. S. Bark who had sent a note to him, to write to the Election Inspector directly and he had merely stated that he could not give any good reason why instead of making a note to Shri B. S. Bark, he himself addressed a note in the Election Inspector. I see nothing disparaging in this reply. Shri B. S. Bark,

must have been busy in counting and naturally the Nazir instead of disturbing him thought it proper to send the note to the right-man. He was also asked that in the note there was no mention of '2' bulbs for the verandah and how did he make that mention in his note. He merely stated that he did it on his own initiative. I see nothing wrong in his taking that initiative if the work could be facilitated that way. He was then asked as to why he placed that note before Shri K. M. Saran and he stated that he was the Officer-in-charge of the Nazarat and he thought it fit to obtain final orders from him on this matter. He has denied the suggestion that this slip Ext. W.R. (76) was procured after counting. Shri K. M. Saran, who was the Treasury Officer has been examined as R.W. 24. In his examination-in-chief he has stated that the Nazarat Office used to provide facilities to help the District Election Officer in connection with the election and counting of votes that took place in February, 1962. He was then shown Ext. R. 76. He has proved his note in red ink and he further stated that he had no knowledge as to whether any compliance was made in this matter or not. Nothing important has been brought out in his cross-examination on this point. In this connection it may further be noted that the Nazir and the Treasury Officer had really not much to do with the counting of votes. They were merely helping the Officers concerned in order to facilitate their work and it is most unnatural to expect that these two officers would go to the length of forging this document for the sake of helping one of the candidates in the result of counting. It may also be noted that the Nazir having made a note on the paper had to cut it out as it was factually wrong. If this whole document had been forged for the purpose of this case, it could not be expected that such a mutilated note would have been prepared for this purpose. If a wrong note had been made, there was no difficulty in tearing off that slip and preparing another one which could contain nothing wrong. The existence of this erroneous note which the Nazir had to cut out, to my mind indicates that it was a genuine document which had been made for the purpose which it indicated. This document was produced after being summoned by the Tribunal and I am of the opinion that this document also fully corroborates the evidence produced on behalf of Shri Ram Ratan Gupta that there was deficiency of light on the 27th of February, 1962.

Another point in connection with the counting of votes on the 27th of February, 1962 is the placement of the agents of the candidates and their ability to check the wrong assortment of ballot papers. On this point the contention on behalf of Shri Ram Ratan Gupta is that the counting agents of the candidates were not in a position at all to note the condition of voting papers and therefore to raise any effective objection with regard to particular paper either being placed in the valid votes of one of the candidates or to its being placed in the doubtful votes by the clerks. Shri V. B. Bhadkamkar election agent of Shri Dandekar has stated in paragraph 155 of his statement that the counting agents were sitting on benches and were looking at tables "sometime sitting there and sometime standing up. In my opinion, they could see by sitting whether the ballot papers were valid or invalid." P.W. 8 (Shri Jamuna Pd. Srivastava) who was an Advocate at Gonda and was the counting agent of Shri Dandekar has stated in his cross-examination: "The counting agents were not allowed to move about freely in the hall. There were benches which were allotted for the counting agents to sit and to which the actual procedure of counting." P.W. 4 (Shri Dasrath Pd. Shukla) who was a counting Supervisor has stated: "The counting agent of a candidate could not supervise the counting at every table because every agent had to keep a watch over three tables". P.W. 5 (Shri Bahadur Singh) states that the counting agents of the parties used to sit on the bench and the agents used to manage two or three tables each. P.W. 7 (Shri Hanuman Pd.) also states that the agents of the candidates used to sit on the benches and they used sometime to come to the tables. From the statements of these witnesses for the petitioner himself the position of the agents is quite clear for each of them had to watch three tables. On each table there were two clerks, one dealing with the Parliamentary votes and the other dealing with the Assembly votes of the same sector. The duty of the agent, therefore, became to watch the work of at least 3 clerks simultaneously, sitting on three tables. The agents were supposed to keep sitting on their benches and from there to watch all this process. In these circumstances, it is quite clear that the agents of the candidates could not have possibly seen how the ballot papers in the hands of each of the clerks were marked and whether the clerk was putting it for one candidate or the other. The supervision of the election agents over the works of the clerks was, therefore, almost nil in that situation and the system of counting, as prevailed, was that if the clerk concerned considered a vote to be valid and placed it for one candidate or the other, it was not necessary for the Assistant Returning Officer to look into those ballot papers. It was also natural because one man could not possibly check up each ballot paper which were running into lacs, within any reasonable time. The responsibility, of incorrect counting or of mistakes rested entirely upon the clerk and the supervision. I am,

therefore, satisfied that the case put forward on behalf of Shri Ram Ratan Gupta on this point is definitely more reliable and the conclusion of the Tribunal that there was sufficient light and that agents were in a position to do their checking properly cannot be supported.

At this stage it will be convenient to deal with one more argument on the question whether P.W. 5. (Shri Bahadur Singh) and P.W. 6 (Ram Niwas) were present in the counting hall on the 27th and 28th of February, 1962, I have held above, that they did not. A document relied upon by the learned counsel for the respondent in this connection was (which the Tribunal summoned from the District Magistrate and the Returning Officer), a chart prepared on the 27th of February, 1962, allotting different tables to different persons in order to ascertain whether these witnesses had attended. The Tribunal was informed that no such chart was prepared. However, some witnesses have spoken about a chart which was either with the Assistant Returning Officer or with the Election Inspector from which different tables on which different officers were allotted to work, were read out. Although the evidence, on this point is not very uniform and it is doubtful whether it is sufficient to prove the existence of any such chart but I do not consider it necessary to examine this matter, in detail because I think that no importance can be attached to this chart even if it was prepared. Admittedly, the duty list which has been placed on the record, gives the names and particulars of the officers out of whom alone appointments could be made for actual work. I have already examined that these two witnesses do not appear in that duty list. The chart could have at the most mentioned the names only and that would not have improved matters. Even if at the time of appointing officers to particular tables some sort of a chart had been made out, it may have been destroyed as unnecessary and useless and may not have remained on the file. No importance, therefore, can be attached to such a chart and the observation of the Tribunal that Sri Maqbool Husain, the Election Inspector deliberately suppressed the chart cannot be supported and seems to be an unnecessary remark.

The work of counting started at 10 a.m. on the 27th of February, 1962. About an hour was taken by the Assistant Returning Officer in instructing the counting clerks and Supervisors about the performance of their duty. At about 11 the actual counting started and continued, till mid-night. There is difference between the parties, as to whether the counting on the 27th of February, 1962, finished at 11 p.m. or well after the mid-night in the early hours of the morning. Nothing depends on the exact point of time when the counting came to an end on that night. Next morning the counting started at about 8 a.m. The counting of Mankapur segment started about afternoon and was last to be counted. In this Segment there was a heavy polling in favour of Shri Dandekar, the Swatantra party candidate. At about 9 p.m. the lead which Shri Ram Ratan Gupta had acquired in other segments began to dwindle out and the case of Shri Dandekar is that about that time the Returning Officer as well as Shri Ram Ratan Gupta came to that place. At first everybody expected that Shri Ram Ratan Gupta was succeeding, and, therefore, the Returning Officer "through the Distt. Election Officer directed everybody to expedite the counting and finish very early. But while they were still waiting, it became apparent that the lead acquired by Shri Ram Ratan Gupta had been practically equalised by 9.30 or 10 p.m. The Returning Officer and the District Election Officer "who had been waiting to take steps towards the declaration of the result of the parliamentary election that night left the place and so did respondent No. 1." The insinuation obviously is that the Returning Officer Shri C. M. Nigam and the District Election Officer Shri Jauhari were in sympathy with respondent No. 1 and when all of them saw that the lead of respondent No. 1 was dwindling away and had practically disappeared, they all left the place in order to think out some method how to overcome that difficulty. This is the first fact alleged on behalf of Shri Dandekar to indicate that the Returning Officer and the District Election Officer were in league with respondent No. 1, and wanted to help him in every way in the matter. This fact is denied by the officers concerned in their writ petitions as well as by respondent No. 1 in his written statement. On this point, on behalf of Shri Dandekar oral evidence has been produced. The first witness is P.W. Shri Dandekar himself. He was not present on the 1st date of counting and his evidence is therefore, not relevant on this question P.W. 2 (Shri V. B. Bhandkarnkar) has stated that respondent No. 1 came to the Shamiana at about 9 p.m. where Mankapur was being counted. Fifteen minutes later, the Returning Officer Shri C. M. Nigam with the Assistant Returning Officer Shri Jauhari came to the Shamiana. He then says that at about 9 p.m. the Returning Officer and the Assistant Returning Officer had left the Shamiana. But from the documentary evidence, it is quite clear that the whole episode about the coming of the Returning Officer to the Shamiana at about 9 p.m. on the 28th of February, 1962 is an after thought merely to give colour to the suspicion aroused much later.

Ext. P. 23 is a letter dated the 2nd of March, 1962 written by Shri Dandekar himself to the Chief Election Commissioner New Delhi, recounting the events at the time of the first count. In this letter there is no mention of the Returning Officer having come to the Shamiana at about 9 p.m. and having gone away in this suspicious manner when the tables started turning. On the contrary in paragraph 4 of the letter, he states, "about this time, the Returning Officer (Shri C. M. Nigam I.A.S.), who is the Deputy Commissioner and the District Magistrate of Gonda and who was out in camp during the day returned to Gonda". The phrase, at about this time "in the above sentence refers to the statement of facts mentioned in the previous paragraph. It is, therefore, important to quote the relevant sentences from the above paragraph" the counting went in late into the night and was finished after the mid-night..... The counting of this assembly segment was the last to be completed and I had secured such a large number of votes as not merely to overtake the deficiency of the other four assembly segments..... except for the result of the postal ballots which had still to be opened, I was thus first and he was second and at this stage a number of objections to the counting of Mankapur Assembly segment were started by or on behalf of Shri Ram Ratan Gupta each of which was specifically considered on merits by the A.R.O. and rejected by him by the orders passed in writing on the spot. Only two points of time which are referred to in this paragraph are either the finishing of the counting at 12 in the night or the objections made on behalf of Shri Ram Ratan Gupta which were rejected by the A.R.O. Both these events took place well after 9 p.m. This letter which was first written at a time when the events were fresh clearly negatives the theory of Shri C. M. Nigam having visited the Shamiana at 9 p.m. and waited there till he found that the results were changing. The first application by Shri Ram Ratan Gupta was given at 10.40 p.m. and was rejected by Shri A. S. Misra at 11-30 p.m. It is, therefore, quite clear that according to this letter Shri C. M. Nigam, the Returning Officer came from the tour much after 9 p.m. and the story of his having come to the counting Shamiana at 9 p.m. seem to be an after thought and no reliance can be placed upon it.

According to the previous arrangement, the results were to be declared at 10 p.m. on the 28th February, 1962. But the counting of Mankapur segment did not finish till 10 p.m. The case of Shri Dandekar is that it was over by 12 midnight and that the Returning Officer should have come and declared the result at that time. But the case of the other side is that the counting did not come to an end by 12 in the night but it continued upto 12.45 a.m. whereafter other finishing processes were to be taken up. This matter, has become important because at 12.25 a.m. the Returning Officer passed an order that the results would be declared at 11 a.m. on the 1st March, 1962 and not as previously arranged at 10 p.m. on the 28th February, 1962. According to Shri Dandekar this order was wholly unjustified because the counting had already finished at 12.25 and this indicated that the order was only meant to give time to Shri Ram Ratan Gupta so that he may be able to do something in the matter and the suggestion, in fact, is that at about 10 p.m. when Shri Ram Ratan Gupta and the Returning Officer went away from the Shamiana they had already decided upon postponement of the results and doing such acts as would make it possible for the ballot papers to be tampered with, so that the election result may ultimately again turn in favour of Shri Ram Ratan Gupta. It is, therefore, important to consider whether the counting of the Parliamentary constituency in respect of the segments, came to an end at 12 midnight. In the petition it was, alleged, "At midnight when the counting in this segment was over and the figures being tabulated for the last round of counting and when it was clear that the petitioner had won the election by an over all majority of about 1,600 votes (excluding the small postal ballots) the election agent of respondent No. 1 presented an application to the A.R.O. for postponing further operation until next morning and requesting that votes in this Assembly segment be then recounted. This too was refused by the A.R.O. in writing..... Soon thereafter the Returning Officer (Shri Nigam) himself sent a note to the A.R.O. from his bungalow stating (in fact contradiction of his own earlier instructions given through the District Election Officer Mr. Jauhari) that he would count the postal ballot papers next day and would declare the result of the Parliamentary election thereafter."

The insinuation in the above paragraph clearly is that the last attempt was made by Shri Ram Ratan Gupta to have postponement of the declaration of the result by an application to the A.R.O. after the counting was over, which was refused. Thereupon the Returning Officer himself sent an order postponing the declaration of the result obviously as a matter of prearrangement with Shri Ram Ratan Gupta. In reply to this paragraph it was stated in the written statement that sending of the note, by the Returning Officer from his bungalow was admitted which reached after 12-30 a.m. when the counting was nearly finished.

It was denied that the order was in contradiction of any earlier instructions by him through the Distt. Election Officer. The order was necessary because according to the Original arrangement, the result was to be declared at 10 p.m. on the 28th of February, 1962 but this was not possible as the counting had not finished. The insinuation contained in the paragraph is also denied. The oral evidence on this point is as follows: P.W. 2 (Shri V. B. Bhadkamankar) has stated (paragraph 25) that the counting of all the segments including that of Mankapur had come to an end by 12 mid-night on the 28th of February, 1962. Only postal ballots had not been counted. He further stated that after the counting was over, they were waiting in the Shamlana for the Returning Officer to come and have the result declared after counting the postal ballot papers. But instead, a note came with time noted as 12-25' intimating that the counting of Mankapur segment was in progress and was likely to continue for two or three hours more and the result would be declared the next day at 11 a.m. when he received that note from the District Magistrate, he signed it at 1 a.m. and made a note on the document marked Ext. P. 42. He further states that immediately after making that endorsement, he went to the District Election Officer where he wrote out an application addressed to the Returning Officer and handed it over to Shri R. B. Jauhari, Assistant Returning Officer. This application, according to him, was presented on the 1st of March, 1962, and this application was marked as Ex. P. 43. The Assistant Returning Officer made an endorsement on this application which is marked as Ext. P. 44. Thereafter, he went back to his election office and booked a trunk call to Delhi and had a talk with Shri Dandekar. He told him everything that had happened.

At this stage it may be useful to note the contents of the order passed by the Returning Officer postponing the declaration of the result of the election. He states in the order as follows:—

"As the counting of votes of the two constituencies Tulsipur and Mankapur is continuing and is likely to continue for two or three hours more and it is now 12.25 a.m. all the contesting candidates are hereby informed that the result of 33 Balrampur and 34 Gonda Parliamentary constituency will be declared on the 1st March at 11 a.m. in my office in the Collectorate". It is to be noted that in this order the reason for postponement of the result was that at 12.25 a.m. the counting of both Tulsipur and Mankapur segments was continuing. It has already been seen from the letter of Shri Dandekar himself that the Returning Officer had returned from tour at about midnight. It is stated by Shri R. N. Misra R.W. 1 that having come back from tour the returning officer visited the counting at about midnight. He must have enquired about the progress in counting and he obviously learnt that the counting of Mankapur regarding 34 Goda Parliamentary constituency as also of Tulsipur of 33 Balrampur Parliamentary constituency was still continuing and was likely to take some more time. In this situation, if he did not consider it practicable to keep on waking for two or three hours more that declaring the result of these Parliamentary constituencies one after the other as the counting came to an end, he does not appear to have acted dishonestly. Any officer in his position may have bona fide considered that a situation had been reached when the postponement of the declaration of the result had become necessary. Section 66 of the Representation of the People Act, 1951 undoubtedly provides that the Returning Officer shall forthwith declare the result of the election when the counting of votes has been completed. Rule 60 of the Conduct of Election Rules, 1961 is as follows "The Returning Officer shall, as far as practicable proceed continuously with the counting and shall, during any interval when the counting has to be suspended, get the ballot papers packets and all other papers relating to the election sealed with his own seal and the seals of such candidates or election agents as may desire to fix their seals and take sufficient precaution for their safe custody during such intervals." As a result of the order of the Returning Officer, two things happened. The counting of the postal ballot papers was continued except that of postal ballots, which were to be counted by the Returning Officer himself when he came the next morning for declaring the result, and the result was not declared then. It is, therefore, contended that this rule 60, which was mandatory and enjoined the continuance of counting votes till it came to an end, was infringed. I am unable to agree with this contention, for this rule provides that the counting would "continue as far as practicable" and in the situation in which the Returning Officer was, it cannot be said that he was very unreasonable in thinking that it had become impracticable even to continue counting of the postal ballot papers also. Since the postal ballot papers had not been counted section 66 was not contravened and when he counted the postal ballot papers the next day, he could have declared the result on the 1st March, 1962. I, therefore, think that by

this order on the statement of fact in that order none of the provisions of law was infringed. I will now look into some further evidence, on the fact stated in this order that the counting of Mankapur and Tulsipur had not finished upto 12.25 a.m. is correct or not. There is a note on this document by Shri V.B. Bhadkamankar stating that the counting of Mankapur constituency was over at 12 midnight and he had put his signatures indicating the time thereof as 1 a.m. Shri R. N. Misra the election agent of Shri Ram Ratan Gupta has also signed this document giving the date as 28th of February, 1962.

The letter of Shri Dandekar (Ext. P. 23) dated the 2nd March, 1962 addressed to the Chief Election Commissioner is again important. He states in paragraph 3(d) as follows: "Mankapur, This Assembly Constituency segment of Gonda Parliamentary constituency was counted at the place notified on 28th of February, 1962. The counting went on late into the night and finished after midnight" thereby contradicting the statement and note of Shri V. B. Bhadkamankar mentioned above that the counting had finished at midnight. Another document which is relevant in this connection is Ext. P. 18 order passed by Shri S. B. Misra, Assistant Returning Officer on the application made by Shri R. N. Misra, election agent of Shri Ram Ratan Gupta requesting him to postpone further counting and to recount those which had already been counted. In this order Shri S. R. Misra has stated the time of receiving the application as 10.45 p.m. and in paragraph 5 of the order he states, "Totalling is still in progress. The total upto polling station No. 76 is yet ready and it tallies with those election agents and candidates who have prepared the statements of totals." This order was passed at 11.30 p.m. It is, therefore, indicated by this order that at 11.30 polling station No. 76 had been counted and the totalling of that round of polling stations was going on. Since there were sixteen tables at the counting place, each round of counting would complete 16 polling stations. In this way 76 polling stations would indicate that fifth round had been completed and after completing this, the sixth round would have started and admittedly each round had taken, on an average, two hours and it was not possible to expect that the sixth round would have completed within half an hour. From this order also it appears that the counting of the sixth round could not have finished before 12.30 or 12.45 a.m. Throughout the petition of Shri Dandekar no allegation has been made that this Assistant Returning Officer was also deliberately passing orders which were not correct.

The letter (Ext. P. 23), written by Shri Dandekar which has already been considered was shown to Shri Bhadkamankar and he states as follows: "As far as I ascertain from this letter in the last paragraph 3 "at this stage" refers to the end of countings of Mankapur segment. At 11-30 p.m. the counting was ending. The statement that R.O. returned to Gonda at the time when the counting was ending is not correct." He also stated that he was not aware that Shri Dandekar had stated that he had obtained information of this letter from the witness. Referring to his own note under the order of the Returning Officer postponing the declaration of the result, he stated, in cross examination that in his endorsement he referred to the time when the actual counting came to an end and did not refer to the other processes which would be required before the result could be declared. He subsequently stated that the end process after the counting was completed, would have taken about one and a half hours. In this connection it is also important to note that at 12-30 a.m. Shri V. B. Bhadkamankar himself made an application to the Assistant Returning Officer for the declaration of the result and in this application he does not say that the counting had already come to an end at 12 midnight. This application is Ext. P.A.A. It was presented, as stated by himself at 12-30 a.m. on the 1st of March 1962. The application itself is dated 1st March, 1962. But it does not give any time and states, "I have to request that as the counting in the last Assembly Constituency of the Gonda Parliamentary constituency is over, the result of the Parliamentary election may please be declared as provided in the Act." He does not say in this application that it was already over at 12 midnight and that they had been waiting for half an hour unnecessarily as stated in the witness box. Shri Dandekar in his statement (paragraph 82) has explained his letter (Ext. 23) in which he had stated that the counting went on late into the night and was finished after midnight, by saying that there, he had referred to the completion of the entire process of counting which involved after the actual counting such as making of packets of the counted ballot papers etc. and he had been given that information by his election agent. The Returning Officer also had reported the matter to the Commissioner by his letter Ext. R. 4. In this letter he states, "As Returning Officer of Balrampur-Gonda Parliamentary constituencies I had originally fixed time for declaration of their results at 10 p.m. on the 28th of February, 1962 but

this schedule could not be adhered to as the counting of Tulsipure, Mankapur assembly constituencies, finished between 4 a.m. and 1 a.m. respectively on the 1st of March, 1962. I, therefore, postpone the declaration of the result at 11 a.m. today." From this order also, it appears that the counting of Mankapur segment of the Gonda constituency came to an end sometime between 12 midnight and 1 a.m. on the 1st of March, 1962. It was also contended on behalf of Shri Dandekar that form No. 20 relating to Mankapur assembly segment (Ext. P. 31A. on the record) indicate that it was prepared and signed by Shri S. R. Misra A.R.O. at 1-15 a.m. and it was therefore, contended that this form having been prepared at 1-15 a.m. and it is admitted by Shri R. N. Misra that it takes about 90 minutes, after the counting is over to finish the whole process, it would be clear, calculating back from 1-15 a.m., that the counting must have come to an end at about 12 midnight. I am unable to agree with this line of argument. Under the instruction this form No. 20 itself should be completed within half an hour or so of the completion of counting of votes [vide instructions to R. O. para 15(p) Ch. VIII]. This would indicate that form No. 20 of each segment is usually completed within half an hour after the counting of votes is finished. From the time given on this form No. 20 it would appear that the counting must have finished about half an hour before this i.e. at about 12-45 a.m. on the 1st of March, 1962. Preparation of form No. 20 is not the last act to be performed after the counting is over. Shri Bhadkamankar P.W. 2 has admitted. "The Assistant of the A.R.O. alongwith two or four clerks was checking both valid and rejected ballot papers after the counting had been completed at the counting Supervisor's table including rejections by the A.R.O. The rejected ballot papers by the A.R.O. were also being checked by the same staff. In the petition itself (paragraph 21) the process adopted at the time of this counting has been described and in the last paragraph (10-x) it is stated as follows. "As the counting of votes cost at each polling station was thus finally concluded the figures were entered in the result sheet (form No. 20) and the counted and sorted bundles of the ballot papers of each polling station were then passed on to other clerks for being packed flat in single packets, one of each polling station, the same being then labeled and signed by the A.R.O. after which they were sealed". Here no mention is made about re-check by the other clerks but it is stated by P.W. 2 and R.W. 1. The signing of form No. 20 thus did not finish the tale process and where Shri R. N. Misra has stated that it takes 90 minutes, he does not mean that form No. 20 is signed after one and a half hours when the actual counting comes to an end.

On behalf of Shri Dandekar one witness Shri Kartiani Datt has also been produced. He is P.W. 10 and he states that he was a worker for Capt. Ramgarib, Raghoram Pandey and the petitioner at the time of the election. According to him he remained outside the counting hall where the counting of Gonda West Assembly segment was taking place. Since Capt. Ramgarib had been losing badly, he went away to Gonda city where he was staying. At about 9 p.m. he was informed by his younger brother that the petitioner Shri Dandekar was winning on account of counting of Mankapur constituency. The witness, therefore came in a jeep car to the place of the Shamiana. There he reached at about 9-30 p.m. and at about 9-45 p.m. he saw that Shri C. M. Nigam, the Returning Officer came back to the Shamiana and he went to his office. Ten minutes later, respondent No. 1 also came out of the Shamiana. At about 12-15 a.m. he came to know that the counting had come to an end. He waited for 10, 15 minutes for the declaration of the result but the Returning Officer had not come. He therefore went to the bungalow of the Returning Officer (Shri C. M. Nigam). There he contacted the peon and he came to know that Shri Ram Ratan Gupta was inside the bungalow talking to Shri Nigam. After about five minutes, Sri Ram Ratan Gupta came out, sat in his car and went away. He then sent information about his arrival. The peon then told the witness that the Returning Officer wanted to know the purpose of his visit. The witness sent information that the counting of votes had finished and that he should come for the declaration of the result. The peon came back and told him that the witness should go to the place of the counting and that the Returning Officer would reach there shortly. The Returning Officer, however, did not reach there and after sometime he sent a note that the declaration of the result was postponed. He also states that when he came back from the place of the Returning Officer, he had informed Raja Sahib of Mankapur, Shri Raghoram Pandey and Capt. Ramgarib, who were there and several other persons that the Returning Officer had promised to come for the declaration of the result. It is significant that although the Returning Officer had given him a clear promise that he would come shortly to declare the result and he had informed of this promise to everybody at the place of the counting. There is no mention of this false promise made by the Returning

Officer either in the letters written by Shri Dandekar to the Chief Election Commissioner reporting against the conduct of the Returning Officer nor is there any mention of this Kartiyan Datt story in the election petition itself. Although in paragraph 33 (sub-paragraph 3) a complaint is made that the order of the Returning Officer postponing the declaration of the result was in flat contradiction of his own earlier instructions through the District Election Officer Shri Jauhari to finish the counting quickly at about 9 p.m. so that the result may be declared as originally scheduled, yet no complaint is made about his having broken his own promise to this Kartiyan Datt made after the counting was over that he would be coming shortly to make the declaration. The evidence of Kartiyan Datt apparently has been thought of subsequently and one more link has been added to the chain to create suspicion against the conduct of Shri Nigam, the Returning Officer. Stating about his introduction to Shri Nigam, the witness stated that Shri Nigam was a fast friend of Shri K. K. Nayar, who introduced him about July, 1961 to Shri Nigam and he had gone to Shri Nigam to recommend a gun licence for a postmaster. No document has been produced to prove this fact of gun licence having been granted by Shri Nigam. This witness was asked in cross-examination whether he was a counting agent for Capt. Ramgarib and he denied all knowledge about it. He was then asked if he had signed the form and he stated that he did not remember it. Not only that but when a counting agent actually starts the work he has again to sign the form in the presence of the Returning Officer or the Assistant Returning Officer. At this place also he was asked whether he signed a second time this form and he again stated that he did not remember about it and he again reiterated that he was not a counting agent for Capt. Ramgarib. This paper has been produced and it shows that this witness was appointed the counting agent for Capt. Ramgarib and that he had signed the form both the times. This completely proves the falsity of this witness. The contention of the learned counsel for the respondent is that although there is no proof of the fact that the name of this witness as the counting agent of Capt. Ramgarib has subsequently been cancelled by filling another form, yet it must be believed that he did not actually act as the counting agent. I find it very difficult to accept this argument. When the form was signed a second time it must have been when the witness actually went for the work of counting. In any case, this witness could not have forgotten that he was appointed the counting agent for Capt. Ramgarib and that he had signed the form to act as such. His denial of these facts clearly indicates that he is not a reliable witness. He was asked in cross-examination that his statement about Shri K. K. Nayar introducing him to Shri Nigam is false and that it was also false that he recommended the grant of a gun licence to the Postmaster of Barkati. But he has reiterated his previous statement which not corroborated by any document or any other evidence which if the fact was true could be produced. He also states in cross examination that when he went to the bungalow of Shri Nigam he did not sign his visitors' register. He was asked as to why he did not protest to the Returning Officer when he did not come after promising to come and declare the result. He only said that it had become late in the night. He felt surprised but he went home. He states that he maintains a diary and he believes that all these matters must have been entered in his diary. But this diary has not been produced. This witness was subsequently recalled and the form of appointment as the counting agent which he had signed, was put to him and in Ext. P. 160 on the record. This time he admitted that he had signed the form. But he stated that he had signed the form six or seven days before the counting and he also admitted that he signed the second declaration. In this form against his name figures 14, 15 and 16 are mentioned and it is clear that he was supposed to be the counting agent for watching tables Nos. 14, 15 and 16. This allotment of tables would not have been possible if he had not actually acted. But this time again this witness denied that he acted as a counting agent and stated that he did not know who had made those figures 14, 15 and 16. In his statement in examination-in-chief he stated that about 9 p.m. his younger brother informed him that Shri Dandekar was winning. This statement also does not appear to be correct. By 9 p.m. it was impossible for any body to ascertain that Shri Dandekar was winning. Even in the election petition itself (paragraph 28) it is stated that on the 28th of February, 1962, the counting of Gonda West Assembly segment finished at 8 p.m. By that time it was known that in this segment alone the respondent had obtained a further lead of 4,167 votes over and above the lead of 4,459 votes and about the same time as a result of the counting of Mahadeva segment the respondent had obtained another lead of about three thousand votes. In paragraph 30 it is clearly stated that about 9 p.m. the extent of lead of the petitioner in Mankapur Assembly segment was not found sufficient to overtake the latter's aggregate lead in other four assembly segments and in paragraph 32 it is stated that it was about 10 p.m. that it appeared that the tables would be turned. Thus at 9 p.m.

when this witness states that he was informed by his brother at his residence in the city of Gonda that the petitioner Shri Dandekar was winning, it is obvious that he was not telling the truth and if this fact is not true, then there was no chance of his having come to the Shamiana where the counting of Mankapur assembly segment was going on. The fact of the matter appears to be that after finishing the counting of his own segment where he was acting as a counting agent, he went away straight to the city of Gonda and must have rested there rather than come to the Shamiana where also there was no chance upto that time of Shri Dandekar succeeding.

After considering the whole evidence on this point. I see no reason to hold that the order passed by the Returning Officer at 12.25 A.M. postponing the declaration of the result was not a bona fide order dictated by the exigencies of the situation and there is no truth in the suggestion either that the counting of Mankapur assembly segment had come to an end before that order was passed at 12 midnight or that he had come to the Shamiana at about 9 p.m. or he had any interview with respondent No. 1 at about 12 midnight when Shri Kartiani Datt alleges that he had been respondent No. 1 coming out of the bungalow of Shri C. M. Nigam, the Returning Officer.

Before proceeding further it will be convenient to dispose of the objections and insinuations regarding the application (Ext. P. 19) made by Shri R. N. Misra on the 28th of February, 1962, at 12 midnight and the effect of its rejection on subsequent orders by the Returning Officer. This application stated, among other things, but now the ballot papers are out, numbers noted by agents and there can be no difficulty if they are re-checked to assure fairness. You may be good enough to postpone further counting process for tomorrow and give us an opportunity to examine and check the ballot papers through the official agency to meet the ends of justice. In the first place, it was contended that this application having been made at 12 midnight indicated that the counting had come to an end at that time. I do not see any force in this contention. It expressly states "further counting process be postponed" indicating that counting process was still going on. What it stated was that the ballot papers were out. This only meant that the last round of counting had started and all the ballot papers had been taken out of the ballot boxes. It was next contended that the object of this application was to get the counting postponed and when this application was rejected by the A.R.O. the same purpose was achieved indirectly by the order of the Returning Officer postponing the declaration of the result till 11 a.m. on the 1st of March, 1962. This contention also has no force. The main purpose of this application was to recheck all the ballot papers that had already been counted and till that rechecking was done to postpone further counting of the remaining ballot papers. This application was neither an application for a recount, as contemplated by rule 63, nor was it an application merely for postponing further counting. The order of the Returning Officer postponing the declaration of the result did not require the postponement of the counting nor did it direct any recheck of the ballot papers already counted. It was therefore wrong to suggest that because of some collusion between the Returning Officer and Shri Ram Ratan Gupta the very same purpose for which this application (Ext. P. 19) was given was achieved by the order postponing the declaration of the result. Such a procedure as was prayed for in this application, is contemplated by the instructions to the Returning Officer under paragraph 17 of Chapter VIII relating to counting of votes. Sub-paragraph (2) of this paragraph directs "If ballot papers are counted at more than one place according to rule 65 the demand for recount of the votes can be made only at the end of the counting at the last place fixed for the purpose. This would be very inconvenient as the ballot boxes and all relevant papers may have to be sent physically to the last place of counting and in that way it will defeat the entire effort and the whole purpose of spreading out the counting at different places. Though generally it is intended that a recount of the ballot papers of a particular polling station could be done only after the counting for the entire constituency is over, if any doubt was expressed by any candidate immediately after the counting of votes at one polling station is over, it is desirable that you check up again. This is strictly not a recount but a check which will satisfy all candidates. By this application Shri R. N. Misra merely requested for a recheck of the ballot papers that had been counted till then. But this was refused and it is wholly irrelevant for coming to any conclusion that the passing of the order by the Returning Officer postponing the declaration of the result had any thing to do with the refusal of the application by the Assistant Returning Officer.

When subsequently on the 1st March, 1962, the Returning Officer had completed the counting of the ballot papers and had made up all the necessary charts, an

application for a regular recount under rule 63 was made to the Returning Officer. This application was granted and it is again contended that by the grant of this application Shri Ram Ratan Gupta achieved what he failed to get from the Assistant Returning Officer by the application (Ext. R. 19) mentioned above. As stated above, the object of that application was entirely different from the object and purpose of the application for a recount made before the Returning Officer. Obviously this second application was necessitated because of the dismissal of his previous application but that does not mean that the Returning Officer always wanted that Shri Ram Ratan Gupta's request for a recheck should be granted and he first asked him to attempt to get it before the Assistant Returning Officer and when he failed to get it there, he granted this subsequent application. This sort of argument and insinuation is based merely on imagination and has no factual basis behind it. I am unable to draw any such inference.

The application for recount is Ext. P. 3. It was made before the Returning Officer on the 1st of March, 1962, but it is dated 28th of February, 1962. It appears that this application was wrongly dated in a hurry. Such mistakes of putting the last date are not uncommon and no inference of collusion can be made out from this back dating.

In the first paragraph, this application alleged that thousands of ballot papers had been mechanically packed up as votes for the other candidates and several had been packed up for being reckoned as invalid and rejected votes which should have been counted for 'me' the undersigned candidate. The complaint in this was that a large number of votes were counted for other candidates which should not have been so counted and again a large number of votes had been rejected which should not have been rejected but should have been counted for him. In the second paragraph, it is alleged that thousands of votes had been rejected as bearing multiple marks but the Returning Officer should have ascertained the intention of the voters and should have treated them as of a particular candidate. In paragraph 3, it is alleged that a large number of votes had been marked on the back instead of being marked on the face side which had been rejected but which should not have been rejected if the mark existed against the cage of a particular candidate. In the next paragraph it was alleged that thousands of votes had been treated as rejected on the ground that they were not marked when in fact, marks were present on them. In the next paragraph, a complaint had been made that a large number of votes had been rejected because marks had been placed on vacant space which was not right. On these grounds recounting of all the ballot papers in the whole Parliamentary Constituency was prayed for. It was stated particularly that the recount be done in respect of the areas covered by the Assembly Constituencies of Gonda North and Mankapur. This application was granted by the Returning Officer by his order dated the 1st of March, 1962 (Ext. P-4). On this date he has granted two applications for recount, one relating to 33 Balrampur Parliamentary Constituency and the other relating to 34 Gonda Parliamentary Constituency. In the Balrampur Constituency the Congress candidate had received the largest number of votes and the application for the recount had been made by an independent candidate. In the Gonda Constituency, however, the largest number of votes had been obtained at the first count by the Swatantra party candidate Shri N. Dandekar and the application for the recount was made by Shri Ram Ratan Gupta, the Congress candidate. Both the applications were granted by the Returning Officer as he thought it fair and proper in circumstances mentioned in the applications. It was argued before him on behalf of Shri N. Dandekar that the Returning Officer had no jurisdiction to grant the application as a similar application for a recount had already been rejected by the Assistant Returning Officer. This request was repelled as rule 63 gave discretion to the Returning Officer and he had full jurisdiction either to grant or to refuse the application. This order of the Returning Officer has again been criticised as a collusive order. I am unable to see any element which would lead to that result. Since the two applications, one against the Congress candidate and the other in favour of the Congress candidate were granted there can be no charge that he was partial to the Congress candidate, as is the suggestion throughout this petition. It was then contended that this order is invalid as it did not disclose any reason. There seems to be no force in this contention also. Rule 63(3) provides as follows. "On such an application being made the Returning Officer shall decide the matter and allow the application in whole or in part or may reject it in toto if it appears to him to be frivolous or unreasonable." The rule, therefore, contemplates that the Returning Officer had the discretion to allow the application if he thought it proper. He is not directed to give any reason for that order. On the other hand, he is permitted to reject such an application only if he comes to the conclusion that the application was frivolous or unreasonable. This would indicate that if the Returning Officer rejects an application he has to give reasons for holding that the application is either frivolous or

unreasonable but for granting an application, he has merely to look to the circumstances and if he thinks that it should be granted he may grant it. The reason behind the rule also appears to be clear. If a recount is granted immediately and every candidate has another chance of scrutinising all the ballot papers and satisfy himself that there has been no mistake, the chances of future litigation would be very much reduced and it is better that the candidate should get themselves satisfied about the counting and the result immediately, rather than have the matter postponed for a long time and contest an election petition which may take years to get decided. I am, therefore, unable to see any mistake in the order much less anything which would lead to an inference that this order had been made not bona fide but with a view merely to help one candidate.

In this connection the attitude of the parties may also be worth nothing.

So far as Shri Ram Ratan Gupta was concerned, in the two applications made to the Assistant Returning Officer and in the application made to the Returning Officer for a recheck or recount of the ballot papers, it was never suggested that the recheck or recount should be postponed for some days. The dominant idea always was to have a recheck which may start immediately. This would completely nullify any suggestion that an attempt was being made on behalf of Shri Ram Ratan Gupta to obtain time so that the ballot papers may be tampered with. On the other hand, on behalf of Shri N. Dandekar whenever an application for a recheck or recount was made it was stoutly opposed. Not only was the opposition to a recheck or recount but it was also said that even if the recount was ordered it should be only a mechanical recount and there should be no rechecking of the ballot papers. This insistence upon avoiding a recheck of the ballot papers has given rise to the legitimate argument on behalf of Shri Ram Ratan Gupta that Shri Dandekar feared a recheck because he knew that the ballot papers had been wrongly counted in his favour during the first count and upon a recheck they would be discovered. For the winning candidate it is understandable to oppose a recount merely because it would delay the announcement of the result at least for a few days but it is not easy to see why he should oppose a recheck in case of recount. If he had bona fide believed that the first count had been honestly done, he should not have feared a recheck at all. By his letter (Ex. P-1) dated the 1st of March, 1962, Shri Bhadrakamkar wrote to the Returning Officer with reference to the order of the recount that Shri Dandekar had taken an assurance from the Returning Officer that the recount of the Gonda Constituency would not commence before Sunday, the 4th of March, 1962 and that in the opinion of the Returning Officer the recount was to cover all the five segments of the Parliamentary Constituency and that he was also assured by the Returning Officer that before the recount started the ballot papers would be kept in the safe custody under a double lock in the treasury strong room. Thus it appears that immediately after the recount order was passed, an assurance had been obtained from the Returning Officer that the recount in that Parliamentary Constituency would not start before the 4th of March, 1962. On the 2nd of March, 1962, Shri N. Dandekar sent a letter to the Chief Election Commissioner in which he related the developments at Gonda and in paragraph 8 of that letter, he requested the Chief Election Commissioner to enquire into the whole affair and to appoint a responsible officer for making the enquiry. He asked that the recount should be stayed meanwhile. He also requested that in the meanwhile the ballot papers be kept in the treasury strong room and a special guard be provided and wanted the recount order passed by the Returning Officer to be set aside, and that if necessary to hold the recount in Mankapur Assembly segment only. But if in the opinion of the Chief Election Commissioner, a recount was ordered then it be confined only to arithmetical recount and should not be extended to a scrutiny or reallocation of the ballot papers whether valid or invalid. These two prayers in this application, one for the postponement of the recount and the other for not including a recheck and reallocation but to confine the recount to a mechanical recount have given rise to the contention on behalf of Shri Ram Ratan Gupta as mentioned above. However I do not see any sufficient reason to find motives behind such application and prayers. When the winning candidate finds that by process of the recount there is a possibility of a change he is naturally inclined to make all efforts to prevent the possibility of any change and no sinister motive or knowledge that the first counting had been unfair can be inferred from this application. The fact, however, remains that upon the representation of Shri N. Dandekar, the Chief Election Commissioner stopped the process of recounting and the recount could not start till the arrival of the Chief Election Commissioner at Gonda when the recount was done under the direction of the Chief Election Commissioner, who left the Deputy Chief Election Commissioner to remain present throughout the process of recount. It is not disputed that the Returning Officer on a request on behalf of Shri N. Dandekar immediately directed that the ballot papers to be recounted of both the parliamentary constituencies be placed in the treasury

double lock and he also directed a special arm guard in the treasury for the purpose. If there had been any intention of the Returning Officer to give an opportunity to a party to get the ballot papers out and tamper with them, he could have very well avoided placing of the ballot papers in the treasury double lock or providing for a special arm guard at least for a day. But he did not do anything of that kind and immediately on request passed an order. Although the order was carried into effect after a few hours at about 8 P.M. yet it is not even suggested that anybody tampered with the ballot papers during this period before they were placed in the treasury strong room.

After the Returning Officer had passed an order for recount, an assurance was taken from him that the recount of this constituency would not start before the 4th of March, 1962. He, therefore, fixed the schedule of the recount by starting the recounting first with 33 Balrampur Constituency from the very next day i.e. the 2nd of March, 1962. He directed the recount only during day time. After finishing with Balrampur he was to start with Gonda Constituency. A sinister motive is seen in this order also and it was argued on behalf of Shri N. Dandekar that by taking upon the recount of Balrampur Constituency first and confining it to day time alone the Returning Officer had made a gift of several days to Shri Ram Ratan Gupta to enable him to arrange for the tampering of the Ballot papers. To my mind, it is hyper-imagination. It was the request of Shri N. Dandekar himself not to take up the counting immediately and he had taken an assurance that the counting would not be started before the 4th of March, 1962. But when his own request was granted, it is now argued that it was a gift, to the other side. Then recount was ordered only in day time obviously to ensure the correct counting so that there may be a through check of each ballot paper. By counting the ballot papers day and night, as was done on the first occasion, the officers engaged in the counting must have been tired and naturally must have become careless in scrutiny and during the darkness of night also the work of scrutiny could not have been done efficiently and in order to avoid this trouble this time if the Returning Officer directed that a recount should be done only during day time there is no justification for imputing motives in this also, that it was done for the purpose of taking as long time as possible so that the other party could get an opportunity of squaring up with the officers and preparing a scheme for tampering with the ballot papers. I am unable to see any force in such an argument. The orders passed were apparently *bona fide* and for the purpose of a correct recount. The postponement of the counting of Gonda Constituency was at the request of Shri N. Dandekar himself.

However, after the Returning Officer had passed an order for placing the ballot papers of both Balrampur and Gonda Constituencies in the treasury double lock, the next phase of the argument starts. This relates to the safe custody of the ballot papers. Shri Bhadkamkar has stated in paragraph 37 of his deposition as to how he went round to the Assistant Returning Officers of each segment enquiring from them as to whether they had received orders of the Returning Officer for the safe custody of the ballot papers. He stated that he first met Shri A. S. Misra, the A.R.O. East and West Gonda segments at about 7 P.M. who told him that he had not received orders as yet. From there Shri Bhadkamkar went to the District Election Office but no information had been received there also till then. Shri S. R. Misra, however, went to the treasury to keep the bags containing the ballot papers of Mankapur segment there. This was at about 7-20 P.M. He went to the residence of Shri R. P. Singh, A.R.O. Gonda North and then to Shri D. S. Shukla A.R.O. Mahadeva segment. He did not meet them. At about 8-15 P.M., he went to the treasury and found that Shri D. S. Shukla and Shri A. S. Misra had reached there and the bags containing the ballot papers of Mankapur segment had already been put in and the ballot boxes and bags containing the ballot papers of Gonda North segment were also being put in. Then Shri A. S. Misra asked him to accompany him to the place where the bags containing the ballot papers of Gonda East and Gonda West segments were stored. He accompanied him and reached the Collectorate Office where the ballot papers were kept. There were Assembly and Parliamentary bags all put there. He says that the bags were five in number out of which only two were Parliamentary bags, one for Gonda East and the other for Gonda West Segments. These two bags were brought from the room by Shri A. S. Misra and were kept in the room in the treasury which subsequently he came to know was the triple lock (armoury strong room). After that he accompanied Shri D. S. Shukla and from there two bags containing ballot papers of Mahadeva were brought by Shri D. S. Shukla and put in the armoury strong room. At that time he signed two chits stating that two bags of ballot papers relating to Gonda East and Gonda West segments and two bags of ballot papers relating to Mahadeva had been placed in the armoury strong room in his presence and he proved Ext. P-2 the memo relating to Gonda East and Gonda West. He also proved Ext. P-1 which was the memo relating to Mahadeva segment. He also states that he examined the seals on these bags and found them intact. It is thus clear from his statement that the

bags containing the Parliamentary ballot papers relating to Gonda East and Gonda West were brought in his presence and kept in the triple lock armoury strong room but he made no objection that the Treasury Officer had directed them to be kept in the double lock and they should not have been kept in the triple lock. He also states that with the permission of the Treasury Officer he stationed four men of his own to watch the treasury lock. It is now contended that the District Magistrate and the Returning Officer had directed the ballot papers to be placed in the treasury double lock but they were not placed in it and were deliberately placed in the triple lock armoury strong room by the Treasury Officer and in this a purpose is seen by the learned counsel appearing on behalf of Shri N. Dandekar. The position has been explained by the Treasury Officer who has appeared in the witness-box. According to the Treasury Officer, on the 1st of March, 1962, when these ballot papers were brought to be placed in the treasury he was very busy with his account which had not yet tallied. Moreover, there was going to be an audit in the treasury and the audit party had come. This would constantly require opening of the double lock of the treasury and the placing of so many bags of ballot papers would not only hinder free movements inside the double lock but would also hinder his freely opening and entering in the double lock for the purpose of audit and comparison of accounts. The triple lock armoury strong room was equally safe if not safer and according to him it was considered by him to be a part of the treasury double lock. The treasury double lock was locked by the Treasurer as well as by the Treasury Officer and the key of one lock each was kept by them. So also the armoury triple lock strong room was also locked by the Treasury Officer, the Treasurer and also by the Nazir who was in charge of arms which were kept there. Thus so far as the safety of these two rooms was concerned. There was no interference and he therefore in order to avoid inconvenience decided to place the ballot boxes in the triple lock which was not likely to be frequently opened. It is, however, suggested that the matter was not so simple and there was a deep design in placing the ballot papers in the triple lock because if they had been kept in the treasury double lock, it was the bounden duty of the Treasurer to enter the details in the register kept for the purpose of valuables kept in the double lock and by keeping these ballot papers in the triple lock the Treasury Officer avoided entering these in the treasury register. This matter was put to the Treasury Officer himself and he replied that this was not so. The treasury register was meant, according to him, to enter valuable articles like jewellery and other things mentioned in the list and there was no mention there of ballot papers. If he had considered these ballot papers to be valuable articles, within the meaning of the Financial Hand book, he would have entered them in the register even though they were placed in the triple lock. The only explanation why he did not enter them in the register was that he did not consider these ballot papers to be such as were required to be entered in that register. In that view of the matter, even if these ballot papers had been placed in the double lock they would not have been entered in the register by the Treasury Officer. Therefore, the insinuation that they were kept in the triple lock to avoid its entry in the register is not correct. Learned Counsel brought to our notice the provisions of the Financial Hand book and contended that after the order of the Collector that they be placed in the double lock they should have been treated as valuable articles and its entry should have been made in the register of valuable articles. But it is not for us to interpret the rule. The question for consideration is whether the Treasury Officer could *bona fide* come to the conclusion that these were not the articles of the nature which required their entry in the register of valuable articles. I am satisfied that the Treasury Officer could *bona fide* take that view.

The Treasury Officer has further contended that they could not be conveniently entered in that register because he understood at the time when they were kept in the treasury that they would be required for a recount bag by bag. But the procedure to be followed when the valuable articles were put in the treasury was that the whole lot of articles entered at one item was taken out together and it would make the entry in the valuables register very cumbersome if each bag and each box had to be separately entered and had to be separately re-entered when taken out and then again kept there. He, therefore, explains that because the articles were being kept on the 1st of March, 1962, when he was very busy, he did not consider it necessary to start a register at once and enter these articles in it. At that time he thought that he would find out the proper form which may be prescribed for keeping these articles and then to start a proper register when he would be slightly more free after finishing the work of the first few days of the month. He then states that when on the 5th of March, 1962 the Chief Election Commissioner actually came and the recount had to start that very day, he did start a fresh register in which he entered all the bags that had been taken in on the 1st of March, 1962 and opened a separate account for bags of each officer so that whenever that office removed any of his bags, it may be entered in his account and when he took back the same it may be again

entered therein. This register was criticised on the ground that the exact procedure which was followed in the valuables register was not followed in this register inasmuch as each bag of bags which was kept there was not given a separate serial number with the result that whenever one bag was taken out, it was not entered in the register that the bag bearing serial number such and such was taken out and whenever that bag was brought in again a separate serial number was not given to it. By not following this method and putting separate serial numbers it was possible for the officers to take out one bag and to bring in another bag and there would be no check in the register to indicate that the same bag had come back which had been taken away previously and in this way it was possible for the officers to take away the bags of parliamentary constituencies on the pretext that they were taking away bags of assembly constituencies and then to bring back the parliamentary constituencies bags after having tampered with the ballot papers under the guise of bringing in Assembly Constituency bags of another constituency. How the bags were taken out and brought in from time to time will be considered a little later but suffice it to say at present that this contention per-supposes that all the officers concerned had combined together to permit the assembly constituency bags to be taken out by the officers themselves and to bring them back after tampering with the ballot papers. If such a conspiracy had already taken place and the Treasury Officer, Treasurer, Nazir and the Assistant Returning Officers who were in charge of the bags and the Returning officer was himself in charge of the whole treasury were in that conspiracy and were acting for that purpose, it would not be of any use even if a register had been started giving a serial number to each bag, for even then the bag of the Parliamentary Constituency could have been taken out and an entry made in the register that the particular serial number of the Assembly bag had been taken out and when the parliamentary bag after making the interpolations had been brought in an entry could have been made that the Assembly bag or another constituency was brought in and a fresh number given to it. I am, therefore, unable to see any substance in the argument that keeping of the ballot papers in the treasury triple lock was motivated to facilitate the tampering of the ballot papers. What is being suggested is that the ballot papers relating to the Gonda East and Gonda West constituencies had been removed from the treasury triple lock on the 8th of March, 1962 and were brought back after they had been tampered with on the 9th of March, 1962. I well, therefore, now take up the question as to whether the movement of the ballot paper bags in and out of the treasury triple lock was, in any way, doubtful and any suspicion can be cast on the *bona fides* of such movement of bags. In order to appreciate the movement of bags, it is necessary to see first the slips under which the ballot papers were kept in the treasury triple lock by the different officers. Ext. P-118-E is a note addressed by Shri R. P. Singh to the Treasury Officer and states that as there was going to be a recount of the Parliamentary constituency, the ballot papers of Gonda North may be kept in the treasury lock-up for safe custody. With this note he kept 18 sealed boxes and 5 bags containing ballot papers. The next is the slip of Shri S. P. Misra (Ext. P-118-E). He kept three bags relating to Mankapur assembly segment and two bags of Balrampur Constituency. Ext. P-118-B is a note by Shri R. B. Jauhari. It is a very short note merely stating "deposited 13 bags in D.L." He does not give the details as to what these 13 bags contained. The original of this document was placed before us for consideration and it was contended that originally it had been only '3' and '3' had subsequently been converted into '13'. We have carefully seen this document even with the help of magnifying glass and I am clearly of the opinion that there is no substance in the suggestion that the original figures '3' was alone written and subsequently figure (1) was added before it. In this document, at first a note was made by the Treasury Officer, as subsequently admits, that it was in his own hand writing, merely stating "Shri R. B. Jauhari 13 bags" in this also figure '13' is quite clear and the formation of the letters etc. is so similar that there is no doubt about the figure '13' having been written at the same time. It appears that the Treasury Officer did not consider it necessary at that time to get the signatures of Shri R. B. Jauhari. But later another endorsement was made stating "deposited 13 bags in D.L." and this time it was signed by Shri R. B. Jauhari himself. Thus figure '13' has not been written only once but twice and at both the places the figure is not at all doubtful. The case of Shri Ram Ratan Gupta is that out of these 13 bags, six related to the Parliamentary constituency and seven to the Assembly constituency since Shri Jauhari did not receive the order of the Returning Officer for placing of the ballot papers in the strong room, he did not exactly know what was to be kept in the treasury strong room. He therefore, brought all the 13 bags which he had in his possession and kept them in the treasury. Even the Treasury Officer at that time had not received the order itself and he, therefore, permitted all the 13 bags to be kept there. The Treasury Officer has stated that all the 13 bags were kept and it was later on that he came to know that out of these bags seven bags related to the assembly constituency. This he came to know when at the time of the recount all the parliamentary bags had been taken for that purpose but the seven

bags remained inside the triple lock armoury strong room. He then asked why they had not been taken for a recount and he was informed that they were assembly bags. They were thereafter removed from the treasury triple lock armoury strong room as it was not necessary to keep them there. Whether this figure was only '3' can be very easily checked from the time taken in counting that was done relating to these segments. When the recount started in the presence of the Chief Election Commissioner three parliamentary bags were taken out on the 5th of March, 1962. They were counted but were not completely finished on the 5th of March, 1962. At the end of the day therefore two full bags and one small bag containing the few uncounted ballot papers were brought back in the treasury room on the 5th of March, 1962. On the 6th of March, 1962, again five bags were taken out including the small bag with the result that three bags which had been taken out on the 5th of March, 1962 were again taken out and two more fresh bags were taken out for counting. Three bags were then returned back on the 6th of March, 1962 to the treasury and one remaining bag was taken out again so that the recounting of the parliamentary constituency went on on the 5th as well as on the 6th March, 1962. Two bags and a little more were counted on the first day and three bags and a little more were counted on the second day. If the total number of bags had been only three, there was no possibility for the recount going on for two days and the contention of the learned counsel for Shri N. Dandekar that there were only three bags for this parliamentary constituency is based on mere surmise and a desire to find fault where there is no iota of evidence in support of it. It was then contended that from the account of Shri R. B. Jauhari kept in the register (Ext. P-211), it appears that three bags were taken out on the first day and six bags taken out on the second day. This would make the total number of parliamentary bags as eight and it will reduce the number of assembly bags to only five. This argument does not take into consideration that on the first day three bags were taken out and they had not been completely counted with the result that all the three bags had to be taken out again on the second day and after completing the counting of those three bags they were packed up in two bags only. Thus two bags were taken out twice and the number of bags remained '3' and not '8' as suggested. Since Shri R. B. Jauhari had not been called to the witness box by any party he did not get an opportunity to explain this which he has done in his writ petition and I am fully satisfied that there is no mistake in the account and the account fully proves that there was six bags of parliamentary constituency which had been counted on the 5th and 6th of March, 1962. If six bags related to the parliamentary constituency, the other seven bags must have related to the Assembly Constituency, as stated by the Treasury Officer and these seven bags of the assembly constituency were removed on the 6th of March, 1962 when it was discovered that they were assembly bags and need not be kept in the triple lock armoury strong room. After removing all these assembly bags, only five parliamentary constituency bags remained in the account which were removed on the 8th. To come to the movement of bags, it has been seen that the Chief Election Commissioner had arrived and the recount actually started from the 5th of March, 1962. Three bags were, therefore, handed over immediately for the recount. The Treasury Officer has explained that he did not want to hand over the bags till he had started a proper register in which the entries were made. But there was a hurry as everybody was waiting to start a recount and therefore Shri R. B. Jauhari took away three sealed bags of Sadhullahpur Assembly sector segment of Balrampur Parliamentary Constituency which were to be counted first. Since no register had been prepared till then he made a note of it (Ex. P-118A) on the very slip on which the deposit had been noted on the 5th of March. This is the very first issue of three bags mentioned above from the account of Shri R. B. Jauhari entered in Ext. R. 211 which was prepared immediately after the issue of these bags. In this register, it is clearly mentioned that the entries relating to the 1st of March, 1962 were being made from the slips and subsequent entries were made and signed by the officers concerned who either deposited or took away the bags. Its genuineness was doubted. On this score, that register was prepared after wards and not on the 1st of March, 1962. That register cannot be called 'ante-dated register.' It expressly states that it was prepared on the 5th of March, 1962 but the account could not be made clearly unless the deposits which had taken place on the 1st of March, 1962 were made and explained. All the movements of bags are entered in the Register, (Ext. R-211) and there was no attempt to conceal any movement. What I have now to consider is whether the reasons given out for the movement of bags i.e. why they were taken out and fresh bags brought in after the 5th of March, 1962, when the recount started, was justified or, as has been alleged on behalf of Shri N. Dandekar, there was no genuine necessity for this movement and an occasion was created for the unnecessary movement to facilitate tampering of the

ballot papers. Admittedly, after the ballot papers had been locked in the triple armoury strong room, the strong room was not opened till the 5th of March 1962, when the recount started and the special guard appointed by Shri Bhadkamkar also kept a watch over the locks of the room and admittedly they were not disturbed. The question to be considered only is what happened after the 5th of March, 1962. On the 6th March, 1962 when it was discovered that Shri R. B. Jauhari had wrongly kept the boxes containing the assembly ballot papers and seven bags containing those papers were removed from the triple lock, no objection had been raised with regard to this removal but the contention on behalf of Shri N. Dandekar is that this is a faked entry. His case is that in fact, Shri R. B. Jauhari had brought in only three parliamentary bags which were converted into 13 and subsequently as five bags had been taken out on the 8th of March, 1962, three relating to the Balrampur constituency which were originally brought in and two relating to Gonda east and Gonda west and in order to adjust this taking out of five bags on the 8th of March, 1962 when only three bags had been brought in, the figure '3' was changed into '13' and it was wrongly shown that seven assembly bags were also kept there. The case, therefore, is that no bags were, in fact, taken out on the 6th of March, 1962 and therefore there was no question of the bags of Gonda east and Gonda west parliamentary segments of Gonda constituency being taken out on the 6th of March, 1962. As already noted above, this theory of only three bags having been brought in cannot be sustained. Moreover, no attempt has been made to show that the parliamentary ballot papers of this Balrampur constituency were contained only in three bags. These ballot papers must have existed at least upto the time when the tribunal was hearing the election petition and if an enquiry had been made, the fact would have been discovered and conclusively proved that there were only three bags of that parliamentary constituency. The existence of seven bags of the assembly constituency would also have been proved. With regard to the entry in Ext. R-211, the register maintained for keeping these ballot papers in the triple lock, a criticism has been leveled regarding the triple lock by Shri R. B. Jauhari against the taking out to the seven assembly bags which said, "Deposited in judicial record room". The argument is that the entry must have been made when the seven bags were taken out on the 6th of March, 1962 from the triple lock and the entry that could be made at that time was that the bags had been taken out or would be deposited in the judicial record room. The entry stating "deposited in the judicial record room" indicates that the entry was made after they had been deposited. It is, therefore, contended that this note itself indicates that they were already there and the note is a faked one. I am unable to accept such a theoretical argument which is not based upon any fact leading to that inference. Shri R. B. Jauhari was not called to explain this entry and no adverse inference was to be drawn from it. It may have been that Shri R. B. Jauhari sent these bags to be deposited in the judicial record room and after the man came back with the information that the same had been deposited, he made an entry in the register. I am unable to agree with the contention that this entry of the removal of seven assembly bags on the 6th of March, 1962 is a faked entry and no bags were removed on that date.

The next point regarding the removal of bags is with regard to shifting of the bags from the triple lock to the double lock up. The sadar nazir, who was in-charge of the arms, Shri Kalicharan Jauhari, has stated that on the 6th of March, 1962, he was informed that the Commissioner was about to visit the district. The office superintendent of the Collectorate had told him that the programme of the Commissioner's visit had come and he should prepare for the inspection of the Commissioner. He then realised that the arms which were kept in the triple lock armoury strong room had not been cleaned and verified for more than a year and since the commissioner was likely to inspect the arms also, the work of cleaning and verification of the arms had to be done immediately. The programme of the Commissioner is on the record and indicates that he was to visit Gonda on the 23rd and 24th of March, 1962. From the endorsement of the Collectorate office on this paper it is clear that it was received on the 6th of March, 1962. This programme is Ext. R-210. The Nazir has stated that he expected to take seven or eight days in cleaning the arms and there are four days for verification of the arms which was to be done by Shri R. B. Jauhari, who was officer-in-charge of the arms. From notification in the Government gazette it has been shown to us that Shri R. B. Jauhari was going on leave from the 19th of March, 1962. Thus the work of the cleaning and verification of arms was to finish by the 19th of March, 1962. The programme of the Commissioner's visit having been received on the 7th of March, 1962, it was naturally urgent for the nazir to see that he was able to start the work of cleaning the arms at once. As long as the ballot papers were locked in the triple lock-up he could not remain inside the room with his assistants for the whole day and carry on the work of cleaning the arms. He, therefore, on the 7th of March, 1962 wrote a slip (Ext. R-6) and took it to the officer-in-charge Arms Shri R. B. Jauhari stating that in connection with the visit of the Commissioner, it was necessary to remove the ballot papers, as he

could not do the work and it was very important that the arms be cleaned forthwith. The nazir states that when he took this note to the officer-in-charge of the Arms he kept it with him and told him that he would talk over the matter with the District Magistrate and will then pass suitable orders. From Ext. R-6 it appears that on the same day Shri R. B. Jauhari made a note addressed to the District Magistrate saying that the bags of ballot papers of the Constituencies which were to be recounted may be shifted to the double lock of the treasury and others to the tahsil record room. This was approved of by the D.M. on the 7th of March 1962. The officer-in-charge of arms then made a final order to the nazir as follows: "Inform the tahsildar to take the bags of recounted constituencies to tahsil and inform T.O. (treasury officer) to transfer the rest of the double lock." The last entry on this paper is an endorsement by the nazir "compiled with in the presence of D. M. and D.R.O." and after that is a note by Shri K. M. Saran treasury officer stating that the bags were kept in the double lock and 15 bags were handed over to the officers as follows: "5 bags to Shri R. B. Jauhari 8 bags to Shri Devanand Gaur and 2 bags to Shri S. R. Misra." These removals are also corroborated by the entries in the register (Ext. R-211) showing the account of bags of each officer. The witness further states that Shri R. B. Jauhari sent for him on the morning of the 8th of March, 1962 and informed him that the District Magistrate had approved of this procedure and asked him to inform the tahsildar to reach the treasury at about 1.30 or 2 p.m. and take away the bags which had already been counted. He asked him also to inform the Treasury Officer to be there so that the removal may be done. At about 2 p.m. everybody collected at the treasury and 15 bags were handed over to the tahsildar for being taken to the tahsil record room and the other bags were shifted to the double lock. After this had been done, he was given the charge of the armoury strong room so that he may start the work of cleaning the arms and rearranging the same for its verification. The witness has also stated that when the ballot papers were kept in the triple lock arms had been taken away from the racks and had been placed against the back-wall. The racks had been shifted from the middle of the room to side walls and the bags had been stacked in the centre. After these bags had been removed he started cleaning the arms and continued the work of cleaning on the 9th, 10th, 12th, 13th, 14th and 15th of March 1962. It may be noted here that he did not do the work of cleaning on the 11th of March, 1962, which was a Sunday. After the cleaning and rearranging had finished the verification of the arms was done by Shri R. B. Jauhari on the 16th, 17th and 19th of March, 1962.

The case on behalf of Shri N. Dandekar is that the whole of this process starting with a note Ext. R-6 was a faked procedure simply for the purpose of getting an opportunity to remove the bags outside the treasury and to create some confusion so that two bags could be taken out along with others for the purpose of tampering the ballot papers. In support of this contention, it is first pointed out that the Commissioner was to visit on the 23rd of March, 1962 and there was no hurry to start cleaning of the arms at once. It could easily be taken up after the recount of Gonda Constituency was finished. I have considered this argument carefully and I find that it is based upon circumstances which have become known now after the events. On the 6th of March, 1962 when the recount of Balrampur constituency was going on, it was not possible to foretell when the recount of both the constituencies would come to an end. In fact, it came to an end on the 11th of March, 1962 but it was possible that it could continue upto the 12th or 13th of March, 1962. Moreover, it was not possible to exactly foreshadow what time would be taken in cleaning and verification of the arms. As events have happened it is now known that it took six days in cleaning and three days to verify the same but it was not possible on the 6th of March, 1962 to know the exact time likely to be taken in these operations. It had become known that Shri R. B. Jauhari was going on leave from the 19th of March, 1962 and from the 6th of March, 1962 to the 19th of March, 1962 there were hardly 18 days at hand. I am, therefore unable to see that in these circumstances when the arms had not been cleaned for more than a year and the whole operation was really over-due, the nazir who was the incharge of this work should not have been over-anxious to start the work at once. I am unable to see any justification for the argument that Ext. R-6 is a faked document made out only to create an occasion for removing the bags. If all these officers were so minded and wanted to create an opportunity for removing the bags, it was not difficult for them to open the triple lock even on the 3rd or 4th of March, 1962 for the purpose of removing the alleged assembly bags kept by Shri R. B. Jauhari among the 13 bags which he had kept there on the 1st of March 1962 and to remove whichever bags they wanted to take away. All this process of starting a note on the 6th of March 1962, and taking it through the officers concerned was not likely to be thought out suddenly when the commissioner's programme was received and I see nothing but pure imagination behind such an

argument. The second objection of the learned counsel with regard to this note is that the note was addressed by the nazir direct to the District Magistrate while according to the official propriety it should have been addressed to the District Magistrate but through the Arms Officer who was his immediate boss. The contention is that this was not a normal note started in connection with the official business but was just a scrap of paper prepared hurriedly for the purpose of the case. I am unable to see any substance in this argument also. The note is a mere demi-official one. It is not like an application and since the District Magistrate was the incharge of the treasury and the armoury strong room, it was essential to obtain his consent. The note was, therefore, rightly addressed to him and according to the official propriety it was first taken to the officer-in-charge of arms and he forwarded it with his own note to the District Magistrate. I see no impropriety in the way the orders proceeded. Next it was contended that 8th of March, 1962 was a holiday on account of it and it is very strange that all these persons collected together to work on a holiday like the 8th of March, 1962 but they did not continue the work on the 11th and 18th of March, 1962 which were Sundays. If they were in such a hurry as they represented to be in the nazir should have continued the work of cleaning on the 11th of March, 1962 also and the verification should have been continued on the 18th of March, 1962 also which were as good holidays on account of Sunday as was the 18th of March, 1962. The argument is that because the recount of the Gonda constituency was to start on the 9th of March, 1962, it was essential to remove some bags of that constituency on the 8th of March, 1962 so that they could be brought in again on the 9th of March, 1962 before the recount started and on that account alone this shifting of the bags from the triple lock to the double lock was undertaken on a holiday. This again, I see nothing but a fiction of imagination. Up to the 7th of March, 1962 recount of Balrampur constituency had finished. It was on the 7th of March, 1962 that this note brought to prominence the urgency of shifting the bags and vacating the armoury strong room. It was therefore, natural for the District Magistrate who was the Returning Officer and actually doing the work of recount along with the Deputy Chief Election Commissioner to try and finish the work of shifting the bags and sorting out the necessary and unnecessary ones on a holiday, which was the only leisure time to do the work. If it was decided to do this on the afternoon of the 8th of March, 1962, there is no reason to suspect the motions. It was but natural that this time should be chosen for this purpose. As the work was important from the point of view of the safety of the ballot papers, the District Magistrate and Shri R. B. Jauhari came to the treasury and got the work done in their presence. Instead of the presence of the District Magistrate and Shri Jauhari being considered as an act of extra precaution and extra safety it is argued on behalf of Shri N. Dandekar that they had no business to come there and that they came only for the purpose of ensuring that nobody created an obstruction in the removal of the bags which were required for being tampered with. This contention again has merely to be started to be rejected. It may also be noted in this connection that by the 8th of March, 1962, the first week's rush of urgent work in the treasury was over and therefore the treasury officer was not also put to as much difficulty, as he was in the beginning of the month, if the ballot papers had been placed in the double lock. The arrangement was, therefore, very natural and was rightly decided upon to carry on the official work efficiently.

Another matter has to be considered in connection with the shifting of the ballot papers. One Pratap Narain Tiwari had made an application on the 7th of March, 1962 that the ballot papers of his assembly constituency (Balrampur South) were lying in the tahsil and as he was going to file an election petition, he wished that these ballot papers be kept in safe custody. On the said date, the District Magistrate had passed an order that these ballot papers which consisted of eight bags should be kept in the treasury. The tahsildar brought these eight bags for being kept in the treasury on the 9th of March, 1962 at about 9 A.M., before the recounting of Gonda Parliamentary constituency started and they were placed in the double lock. Learned counsel for Shri N. D. Dandekar has strenuously contended that this whole affair and the application by Shri Pratap Narain Tiwari and the orders thereon were all manipulated in order to give an opportunity to bring in some bags of ballot papers on the 9th of March, 1962 and he contends that it has not been explained how these eight bags of ballot papers which should have been in the Balrampur tahsil had come to Gonda tahsil so that they were to be kept in the treasury there. This was a question raised by the learned counsel only in the arguments. No attempt was made in the evidence to find out the cause of their being brought to the Gonda tahsil. A reasonable explanation would have been available if an attempt had

been made to find it out but without trying to bring the relevant facts on the record, the argument is wholly misplaced and unjustifiable. No suspicion can be raised against this conduct of the persons concerned which would involve the officers of Balrampur Constituency also, who should, according to the learned counsel have been in charge of these ballot papers as to why they handed them over to the tahsildar at Gonda unless facts were elicited which would indicate that the conduct was not normal. It was then contended that why the application was made on the 7th of March, 1962 which according to him was "a fateful day." A clear answer to this question has been given by the learned counsel for the other side by putting another question as to why this application could not be made on the 3rd or the 4th of March, 1962 and thereby enable the conspiring officers to do the same thing which was done on the 9th of March, 1962 and such an imaginary argument, to my mind, leads us no where and it deserves no consideration. The next contention of the learned counsel is that the tribunal was hearing the case. No attempt was made to prove that these to his own returning officer and not to the District Magistrate. This argument also overlooks that the District Magistrate was an officer-in-charge of the treasury and without his orders nothing could be placed in the treasury. The application was, therefore, rightly addressed to the District Magistrate. The next objection of the learned counsel is that the orders for keeping them in the treasury had been passed on the 7th of March, 1962 and the tahsildar had come on the 8th of March, 1962 to take away certain bags from the treasury. Why did he not at that time also bring these eight bags for being kept in the treasury. This again is an imaginary argument without trying to bring in the reason for this conduct. The tahsildar was the proper person to be put in the witness-box and to ask this question. If he was unable to give a good explanation, an argument could be advanced on it. There is nothing on the record to indicate that the tahsildar had come to know by the time he came to the treasury according to the orders of the District Magistrate to take away certain bags of ballot papers, that he had also to deposit these ballot papers in the treasury. Moreover, other difficulties may have stood in his way. These ballot papers may have been locked somewhere, keys of which were not available immediately to the tahsildar when he learnt that he had to come and pick up some bags from the treasury and he could not at the same time bring these bags for being kept there. There may have been several other good reasons for his not bringing eight bags to the treasury on the 8th of March, 1962 and I am unable to make out any adverse inference. The hollowness of this argument is seen clearly when we find from the register (Ext. 211) that these eight bags have been deposited on the 8th of March, 1962 remained lying in the treasury till December when they were removed. If these eight bags which had been brought on that date were not the eight bags of the assembly constituency but contained at least two bags of Gonda parliamentary constituency which were removed on the 8th for being tampered with, then only six bags should have remained in the treasury after the recount. Moreover, the fact that these eight bags belonged to the assembly constituency concerned, could have, in fact been ascertained at the time when the tribunal was hearing the case. No attempt was made to prove that these assembly ballot papers were contained in anything less than the eight bags. I, therefore, see absolutely no substance in this contention on behalf of the learned counsel. Next it was contended that the keeping of these eight bags in the treasury was not at all an important factor and it was not necessary for the District Magistrate and the sub-divisional Magistrate Gonda to come to the treasury for keeping these bags inside the double lock of the treasury. It appears from the statement of Shri Kalliharan Jadhav, Sadar Nazir that the District Magistrate, Shri A. S. Misra and the S.D.M. Gonda all came to the treasury at the time when the ballot papers of Shri Pratap Narain Tiwari were kept in the treasury between 9 a.m. to 10 a.m. and from this statement a very strenuous argument has been advanced that the District Magistrate and the other two officers mentioned above themselves brought the ballot papers and the only purpose of doing so, must have been to ensure that they somehow got in the treasury before the counting started at 10 a.m. I see no reason to attach any importance to such an argument. The witness does not say that all these officers came in the same jeep car in which the ballot papers were brought. All that he has stated is that at the time these officers also came. The recount of the Gonda constituency was to start at 10 a.m. that day and in order to see that arrangements were proper it is not surprising that the District Magistrate who was conducting the recount himself and Shri A. S. Misra who was the Assistant Returning Officer of Gonda East and West also reached the treasury sometime before 10 a.m. when as chance would have it the tahsildar brought eight bags of ballot papers to be kept at the treasury. No sinister importance can be

attached to this fact and I am unable to find any cause whatever to hold that the movement of the bags in and out of the treasury triple lock or of the treasury double lock was at all doubtful and was not motivated by exigencies of the occasion and that the officers, who acted in this connection, did not act absolutely honestly and above board.

Lastly it was contended by the learned counsel that in any case Shri Bhadkankar had made an application on the 4th of March, 1962, that any shifting of the ballot papers, which was necessary should be done in his presence but he was not informed of these movements, only to conceal the activities of the officers. This argument also has no force. The application (Ext. P. 25) merely stated that if any shifting was necessary on the 4th of March, 1962, he would be available on the telephone noted therein and he should be informed of it. Since no shifting was found necessary on the 4th of March, 1962 the application exhausted itself and when suddenly on account of the Commissioner's visit it became essential to shift the ballot papers from the triple lock to the double lock, nobody may have remembered about this application which was not relevant for these subsequent days.

I am, therefore, unable to see any reason to doubt that the ballot papers were in absolutely safe custody from the time of the first count to the time when they were recounted and there was no opportunity for anybody to meddle with the ballot papers.

Having dealt with the safe custody of the ballot papers after the first count till the recount I now proceed to consider the facts as they occurred after the returning officer had passed an order postponing the declaration of the result to the 1st of March, 1962, at 11 a.m. instead of 28th of February, 1962 at 10 p.m. It has been already stated that after the postal ballot papers had been counted and the totals have been prepared an application for the recount was made on behalf of Shri Ram Ratan Gupta in respect of the Gonda parliamentary constituency and another application had been made by other candidate in respect of the Balrampur parliamentary constituency and the returning officer had passed orders for a recount. The same day he had also passed orders so far placing the ballot papers in the treasury double lock and the ballot papers had been so deposited in the armoury strong room by 8.50 p.m. On the 2nd of March, 1962, Shri N. Dandekar addressed a letter to the Chief Election Commissioner (Ext. P. 23). In this letter he recounted a number of grievances and asked that recounting should be stopped and in any case the recount should not include a re scrutiny of the ballot papers. As a result of the representation, made by Shri N. Dandekar, the Chief Election Commissioner directed by a telegram the stoppage of further work of recounting. The telegram which was received at Gonda is Ext. R. 145 and reads as follows, "E. 3523/CEO. Chief Election Commissioner India accompanied by the Deputy Chief Electoral Officer reaching Gonda at ten hours on Monday morning March 5th Chief Election Commissioner will hear the candidates and their election agents in the matter of recounting of votes in Gonda and Balrampur Constituencies at 11.30 time. All proceedings may be held up." In pursuance of this order, no action was taken by the returning officer regarding recounting of the ballot papers. The Chief Election Commissioner reached Gonda on the 5th of March, 1962 and he heard all the parties concerned, on the question whether a recount should be ordered. He passed an order the same day confirming the order of the returning officer that a recount should be held and that it should include a rescrutiny of all the ballot papers. This order is Ext. R. 144. Thereafter, lots were drawn in order to decide whether the recounting should start first of 33 Balrampur constituency or of 34 Gonda parliamentary constituency and it so happened that 33 Balrampur constituency was to be recounted first and the recount of Balrampur constituency thereupon began in the presence of the Chief Election Commissioner in the afternoon of the 5th of March, 1962.

The recount having been started in these circumstances, it is worth noting that the attitude of the officers concerned with the counting of the ballot papers or of the safe custody of the same does not appear to be that of persons who had determined to get the ballot papers tampered with in order to help the Congress Candidate in 34 Gonda constituency. Admittedly from the 1st of March to 5th of March, 1962 all the ballot papers remained locked in the armoury strong room and no attempt was made even to open the locks. On the 3rd of March, 1962 it had become known that the Chief Election Commissioner would himself come and would see to the recounting in his presence. If these officers were at all minded to tamper with the ballot papers it would have been their first thought to do what

they could with the ballot papers before the Chief Election Commissioner arrived and would not have waited on the off chance of the counting of this Gonda constituency to start a few days after the arrival of the Chief Election Commissioner. As it happened it was merely on the taking of lots that the recount of Gonda constituency came afterwards otherwise if lots had decided that Gonda constituency should be recounted first, the recount of this constituency would have started on the 5th of March, 1962 itself and there would have been no opportunity to anybody to even allege that the ballot papers had been tampered with. This, to my mind, was not the attitude of the officers who had from the very first day, when the counting appeared to go against the Congress candidate, had determined to see that the ballot papers were suitably tampered with so that the result may get altered. I am, therefore, clearly of the view that any insinuation against the honesty of the officers concerned not based upon tangible facts has no substance and the learned tribunal went wrong in getting prejudiced against them.

33 Balrampur constituency continued to be recounted on the 5th 6th and 7th of March 1962. The Chief Election Commissioner, however, returned but left the Deputy Chief Electoral Officer to get the recounting done in his presence, and the recounting of 34 Gonda constituency parliamentary started on the 9th of March, 1962 and continued upto the 11th of March, 1962. On the 9th of March, 1962, the entire Mankapur assembly segment and 70 polling stations of Mahadeva assembly segment were finished and on the 10th of March, 1962, the remaining polling stations of the Mahadeva assembly segment and of the entire Gonda North assembly segment were recounted by lunch. After lunch the recounting of Gonda East assembly segment started which as stated above, had been first counted in the combined office on the 27th of February, 1962 in the conditions mentioned above. While this counting was going on, it was discovered that among the ballot papers which had been rejected at the first count on account of there being no voting marks or because they had voting marks on the blank space, were found to have marks against the bull cage, the symbol of the congress candidate. It was also found that a large number of ballot papers had been counted as valid votes for Shri N. Dandekar whose symbol was that of "Star" and those were liable to be rejected on the ground of multiple voting. When a large number of such wrong counting was discovered, it is stated in evidence that there was an uproar in the counting hall. Such an uproar was natural. The persons present on behalf of Shri N. Dandekar must have felt that the lead which Shri N. Dandekar had acquired at the first count was dwindling away like this and as Shri N. Dandekar had already envisaged that there would be a tampering of ballot papers after the first count, it was treated as a positive proof of the fact that the ballot papers had been tampered with and, therefore, this recounting did not indicate a true position of voting. On the other hand, persons who were watching the recount, on behalf of Shri Ram Ratan Gupta must have felt that there was the reason why Shri N. Dandekar had got the largest number of votes at the first counting. According to them, there had been deliberately a wrong counting in favour of Shri N. Dandekar which was being discovered then. Thus the persons interested in both the sides must have become excited. The result of this excitement was, as stated in the petition, that the Deputy Chief Electoral Officer as well as the returning officer observed the situation, drafted out a few chart and directed the clerks concerned to enter such voting papers as had been discovered to be wrongly counted at the first count in that chart and also directed that such ballot papers be kept separately. This action naturally must have been taken so that such ballot papers may be easily available at any subsequent proceedings that may be taken by the authorities or by the Chief Election Commissioner. The recount in this way went on till 8 p.m. when it was stopped for the day as some of the packets of the constituency were not available and they had to be searched out. However nothing turns upon this non-availability of some of the packets containing ballot papers of this constituency because all these ballot papers were discovered the next day among the assembly ballot papers as they had been wrongly packed with the assembly ballot papers and upon the recount it was found that the ballot papers contained in these packets which had been subsequently recovered, did not contain such ballot papers as had been wrongly counted during the first count, and therefore, even according to Shri N. Dandekar no suspicion of tampering existed with regard to any of the ballot papers recovered from these packets subsequently. After the work of recount had been stopped on the 10th of March, 1962, Shri N. Dandekar sent a telegram to the Chief Election Commissioner which is attached as Annexure 6 to the election petition. In this telegram, Shri Dandekar writes, ".....The recount of this segment disclosed extensive tampering with ballot papers firstly by invalidating by means of subsequent multiple marking about 1600 votes validly counted in my favour at the first counting and secondly by validating in favour of Congress candidate nearly

200 blank ballot papers previously rejected because bearing no marking thereby overtaking in the aggregate the margin of 1,576 votes by which myself had won the election on first counting". The recounting again started on the 11th of March, 1962 at 10 a.m. as usual and the counting went on till lunch. It may be noted here that at the time of this recount the Returning Officer Shri C. M. Nigam himself was scrutinising the ballot papers which were considered doubtful by the counting clerks and the Supervisors. Shri Subramaniam was also sitting by his side and supervising the whole process. On the 11th of March, 1962 a letter was handed over to Shri Subramaniam on behalf of Shri N. Dandekar requesting that a thorough investigation be made into the tampering of the ballot papers and in the meanwhile the declaration of the result of the election be withheld. After the recount was over the position of voting with regard to the two contesting candidates in the Gonda East and Gonda West segments of the parliamentary constituencies has been reproduced in the election petition as follows: In Gonda East, Shri Ram Ratan Gupta had originally obtained 16,900 valid votes while at the recount he obtained 17,025 valid votes. Thus he obtained 125 more valid votes at the recount. Shri N. Dandekar had received 13,449 valid votes in that segment at the first count but at the recount he obtained 11,658 valid votes. He thus lost 1,791 votes in this segment alone.

The position in Gonda West was as follows:

Shri Ram Ratan Gupta had originally obtained 11,435 votes at the first count which did not change at the recount while Shri N. Dandekar had received 7,268 votes at the first count but at the recount he obtained 7,107 votes. He thus lost 161 votes in this segment. His total loss in these two segments at the time of the recount was 1,952 votes.

During the lunch hour, the Returning Officer and the Deputy Chief Electoral Officer, who were sitting with him, went to the bungalow of the Returning Officer for their lunch and it appears that they had some discussion about the matter there. The case of Shri N. Dandekar is that the Deputy Chief Electoral Officer gave a direction to the Returning Officer not to declare the result till further orders were received from the Chief Election Commissioner while the case of the other side is that there was no such order and in the absence of any such order the Returning Officer was bound to declare the result under section 66 of the Representation of the People Act, 1951. After the lunch hour was over, the Returning Officer alone came to the counting hall and after completing the fact process declared the result to the effect that Shri Ram Ratan Gupta was declared elected and Shri N. Dandekar was defeated. The question at this stage is whether Shri Subramaniam had issued orders to the effect that the result should not be declared and the declaration of the result after the order had been passed, was an invalid declaration of the result. The Tribunal has held that the declaration of the result was invalid because there was a clear order asking the Returning Officer not to declare the result after counting was over.

I will now deal with the evidence relating to this matter. Paragraph 75(b) of the petition states as follows: "The petitioner then bluntly asked the Returning Officer whether he had not received any direction at all from the Election Commission either directly or through the Deputy Chief Election Commissioner to refrain from declaring the result. To this, much to the petitioner's astonishment, the Returning Officer gave a flat denial by way of an answer.". This indicates that at the very moment when the result was being declared, the version of the Returning Officer was that he had not been directed by the Chief Election Commission or by the Deputy Chief Election Commissioner not to declare the result. Naturally, therefore, under section 66 of the Representation of the People Act, 1951, he was bound to declare the result. Since the petitioner alleged that this declaration of result was contrary to the order not to declare the result it was for him to establish that there was an order. While recounting was going on, on the 11th of March, 1962 Shri N. Dandekar sent a telegram to the Chief Election Commissioner requesting the immediate intervention of the Chief Election Commissioner directing the Returning Officer to refrain from declaring the result. Another telegram (Ext. P-32) was again sent the same day after the results had been declared. In this telegram it was stated that the Returning Officer denied having received any direction not to declare the result, which the petitioner was unable to believe if any direction had been issued either orally or in writing and either directly by the Chief Election Commissioner or through the Deputy Chief Election Commissioner then immediate action be taken to set aside the result already declared by the Returning Officer. It is important to note that even in this telegram it has not been alleged that the Deputy Chief Election Commissioner had given any direction to the Returning Officer not to declare the result. Even after this telegram, the petitioner did not receive any

reply from the Chief Election Commissioner saying that orders had been passed not to declare the result or taking any action in the matter. This telegram was followed by a letter and in this letter also there is no allegation that the Deputy Chief Election Commissioner had directed the Returning Officer not to declare the result yet the Returning Officer inspite of such an order declared the result. All that is complained of is that the Returning Officer denied having received any orders and inspite of the objection made by Shri N. Dandekar declared the result. The only direct evidence on this point is that of Shri Subramanian, Chief Deputy Election Commissioner, who was examined as P.W. 3. He stated that on the 10th of March, 1962, certain ballot papers originally held valid in favour of Shri N. Dandekar had to be rejected on the ground that they also contained another faint mark against the symbol of one or more of the other candidates and therefore, amounted to multiple voting, also found certain other ballot papers comparatively a few in number which had originally been rejected over the signature of the A.R.O. On the ground that there were no marks or marks on the blank area, then contained a faint mark against the symbol of Shri R. R. Gupta and these ballot papers were held valid at the recount in favour of Shri Ram Ratan Gupta. In paragraph 6 he states, "I then immediately took the Returning Officer to an adjoining room and had discussions with him. I went to the Collector's residence along with Returning Officer at about 5 p.m. Collector/R.O. himself rang up the Chief Election Commissioner, New Delhi and told him about these happenings and thereafter I was told by Shri Nigam, R.O. that the Chief Election Commissioner wanted to speak to me on the phone. I gave the Chief Election Commissioner a gist of what had happened here and a so told him that we were keeping an account of all these ballot papers which seemed to be abnormal and would report later, and in the meantime I was directing the Returning Officer not to declare the result. The Chief Election Commissioner approved and said I should let him have the report when the counting is over. "From this statement of the witness, it is apparent that he had informed the Chief Election Commissioner about the facts that had already happened and had promised to report later. He had also informed him that he was going to direct the Returning Officer not to declare the result in the meanwhile, meaning thereby that the result could not be declared before the (the Deputy Chief Election Commissioner) contacted the Chief Election Commissioner again and the Chief Election Commissioner asked the Deputy Chief Election Commissioner to report to him after the counting was over. But he does not say that after this talk he actually directed the R.O. not to declare the result was over. It is, therefore, clear that by the time this talk took place with the Chief Election Commissioner, no information had been given to the Returning Officer not to declare the result. The question is whether any such order was given at any time after this talk. This talk had taken place at about 5 p.m. on the 10th March, 1962 and the counting had yet to go on, the 11th of March, 1962. In paragraph 7 the witness states, "By lunch time on the 11th of March, 1962, the recounting of all the polling stations were finished. At the time we did not discuss anything. But when we were having a lunch at the residence of the collector, I told him that we should report the full facts to the Chief Election Commissioner and if possible get him on telephone. In the meantime the result should not be declared and for this purpose I told him that I would sign a formal order, a draft of which I had given him the previous night. But he would not declare the result. I had dictated the drafts to the Stenographer of the Collector in his presence". From this statement, it appears that before the lunch time, all the counting had come to an end and at the time of lunch they were free to contact the Chief Election Commissioner as promised a day earlier. But he does not state that any attempt was made either by him or by the Returning Officer to contact the Chief Election Commissioner on the phone on the 11th of March, 1962. If this witness was stating according to the last quotation mentioned above, he would be expected to contact on phone the Chief Election Commissioner and till such contact the Returning Officer would wait and would not go to the counting hall in order to declare the result. But no such attempt seems to have been made and it is difficult to understand that even after such a talk between the Deputy Chief Election Commissioner and the Returning Officer, no contact was made on phone with the Chief Election Commissioner and yet the declaration of the result was expected to be delayed indefinitely. It is also significant to note that after the lunch was over the Deputy Election Commissioner remained at the bungalow of the Returning Officer. He did not sign any order directing the Returning Officer not to declare the result and in his presence the Returning Officer alone went to the counting hall. These circumstances would indicate that the only purpose of the Returning Officer going to the counting hall must have been to declare the result otherwise he had no other business there. The Deputy Chief Election Commissioner admits in paragraph 8, "I did not accompany the Returning Officer after lunch to the place of the counting". But he gives reasons for

his not accompanying him as "he assured me that he would not declare the result". It is a strange assurance. The Returning Officer had no power not to declare the result after the recounting was over and he was going to the counting hall. Further the counting had come to an end and yet the Deputy Chief Election Commissioner expected him simply to stay there and not to declare the result. The witness further says that at 3.30 P.M. the petitioner met him and told him that the result had been declared. Neither the witness nor the petitioner says that the witness even then told him that the declaration was contrary to his direction. But before this, he had already learnt of the declaration of the result from the Returning Officer himself. This conduct of the Returning Officer would be unexplainable except on the hypothesis that no orders had been given to him not to declare the result. The witness goes on to say that, "I was upset because my orders were not carried out by the Returning Officer. He had actually cheated me." These two phrases are apparently contradictory. If orders had been passed, the only question was of obeying orders and he should have said that he had disobeyed it. But in the next sentence he says that he had cheated him. Cheating involves a matter of agreement and misrepresentation. This is inconsistent, as the Returning Officer could not give any assurance or promise not to declare the result unless orders had been given to him under the law he was bound to declare the result and any amount of assurance given by him would be useless and I am not prepared to believe that the Returning Officer of the standing of Shri C. M. Nigam, I.A.S. and the Deputy Chief Election Commissioner, who must have known the law fully well, could have possibly left the matter to rest on the assurance by the R.O. which was so clearly contrary to the express provisions of law. In cross-examination he admitted that he did not give any direction to the R.O. in writing signed by him. He further stated that he did not give any complaint in writing even after return, to the Chief Election Commissioner that the Returning Officer had disobeyed his instructions. In paragraph 23 of his cross-examination he states, "Normally I did not issue orders unless they were type-written, specially when the facilities are there. The order I wanted to issue to the R.O. was that he should not declare the result but report the facts to the Chief Election Commissioner as directed earlier by the Chief Election Commissioner himself". In the second sentence quoted above, he clearly states that he only wanted to issue an order which means that he had not in fact, issued any order to the Returning Officer not to declare the result. He then states that he had made out two drafts, one of them was a letter from the Returning Officer to the Chief Election Commissioner and after the Returning Officer had signed that letter, he would have signed later directing the Returning Officer not to declare the result. But these drafts were never got fairied out by the Returning Officer and apparently orders remained unsigned because they were not fairied out. According to this witness since the Stenographer was not available to him on the 11th of March, 1962 and these drafts were in the custody of the Returning Officer they could not be fairied out and signed. In paragraph 25 he had to admit that there was no difficulty in writing out an order requiring that the result should not be declared. But he did not do that. He admits that the Returning Officer could not stay declaration of the result except under orders from the Chief Election Commissioner. If the drafts which had been prepared were retained by the Returning Officer and he was not getting them fairied out even after three or four reminders on the 11th of March, 1962 as this witness states, it must have been apparent to the witness that the Returning Officer was not going to get the drafts fairied out and have them signed. If the witnesses really wanted to stay the declaration of the result, he should have written out an order to that effect and handed it over to the Returning Officer. The conduct of the witness in not giving any signed order staying the declaration of the result, only indicates that at the best the witness was in suspicion and did not know whether to issue a definite order or not and the reason for this uncertainty appears to be that according to him the case was covered by Section 58 of the Representation of the People Act, 1951. This section provides for two contingencies (i) where the ballot boxes have been tampered with and (ii) where an error or irregularity in procedure is likely to vitiate the result. The section provides that in such cases, the Returning Officer will make a report to the Election Commission and in sub-section (2) the provision is "thereupon the Election Commission shall after taking all the materials and circumstances into account...". This section, therefore, authorises the Election Commission to take action under sub-section (2) after the receipt of the report from the Returning Officer expressing his opinion. The Deputy Election Commissioner seems to have drafted on the evening of the 10th of March, 1962 a report on behalf of the Returning Officer addressed to the Chief Election Commissioner expressing his opinion that extensive tampering of the ballot papers had taken place and another draft purported to be on his own behalf I shall deal presently with the effect of the drafts but the point here which is worth noting is what transpired between the

witness and the Returning Officer. The Returning Officer apparently did not agree to make any report of the kind the Deputy Chief Election Commissioner wanted him to make and the Deputy Chief Election Commissioner seemed to have found himself powerless to pass any orders without the Returning Officer agreeing to such a report.

I now proceed to consider the drafts which have been produced by Shri Subramaniam as those which he had prepared on the 10th of March, 1962 but which were not raised out and not signed by anybody. Ext. P. 109 is the draft which purports to be on behalf of Sri C. M. Nigam, the Returning Officer and the District Magistrate, Gonda addressed to the Chief Election Commissioner, New Delhi. It is dated the 10th of March, 1962. Among other things this draft contains the following, "When the ballot papers of subsequent polling stations came to me for scrutiny I was surprised to find large numbers of ballot papers 120 to 130 having to be rejected on the ground of multiple voting. Most of the rejected ballot papers appeared to be originally of Shri Danuekar. In addition, a large number of ballot papers which had originally been rejected by the A.R.O. on the ground of no marking or marking on the blank area now contained a mark in each case on the symbol of the Congress candidate. In these circumstances, I am of the opinion that there has been some tampering of the ballot papers after they were originally counted but before they reached my custody. I have already informed you about this yesterday evening over the telephone. This was the statement which obviously the Returning Officer could not possibly subscribe to. After the first count the ballot papers had always been in his custody. If he was absolutely certain that they could not be intertered with by any outsider he could not report to the Chief Election Commissioner that these ballot papers seemed to have been tampered with. This was a matter of his opinion and he could not form that opinion he could not sign such a draft. It was, therefore, natural for the Returning Officer not to subscribe to such a draft and simply to put it in his pocket even if it was given to him for being raised out and signatures as stated by Shri Subramaniam. This draft was originally dictated, as stated by Shri Subramaniam to the Stenographer and when the typed copy was prepared and placed before him, he made certain correction in his own hand writing and then wanted it again to be raised out which was never done. The draft which has been filed bears corrections in his own hand-writing. The next draft is dated the 11th of March, 1962. Although Shri Subramaniam admits that he had dictated this draft also on the 10th of March, 1962, this draft starts by saying, "whereas on information received from Shri C. M. Nigam. The Chief Election Commissioner is satisfied that in the interval between the original counting and the recount a large number of ballot papers polled at several polling stations in the Gonda East Assembly constituency forming part of 34 Gonda parliamentary constituency have been tampered with." No report as contemplated by this paragraph having been made by Shri C. M. Nigam it was impossible for Shri Subramaniam to sign this draft and hand it over to the Returning Officer directing him not to declare the result. In these circumstances it is obvious that no order was in fact, passed by Shri Subramaniam directing the Returning Officer not to declare the result. Because a large number of ballot papers had been found to have contained marks which should not have been there if the first count was correct, a suspicion had arisen in the mind of Shri Subramaniam that there may have been tampering but such a suspicion could not exist in the mind of the Returning Officer, who had taken all possible precaution to keep the ballot papers absolutely safe and had himself supervised whenever the ballot papers had to be shifted from the strong room. Shri Subramaniam therefore hoping that the Returning Officer also had a similar suspicion in his mind might have made out the draft which he has now filed. But such a draft could never be signed by the Returning Officer and was, in fact, not subscribed by him. In the absence of any report from the Returning Officer to the effect mentioned in the draft no order was, in fact, passed by Shri Subramaniam not to declare the result.

By the way it may also be mentioned that along with these two drafts Shri Subramaniam has also filed another draft Ext. III. It is not dated it purports to be another asking for an explanation from the A.R.O. as to why such mistakes had occurred in the first counts as had been discovered at the time of the recount. The draft does not say whether it was to be an order signed by the Returning Officer or by himself and at the end of this draft the last sentence is, "Also state where the ballot papers were kept after you finished the count and before they were brought into the treasury" This again indicates that this draft is the product of the mind of Shri Subramaniam alone as the Returning Officer could not have asked such an explanation from the A.R.O. The Returning Officer must have known himself as to where these ballot papers were, for he had passed an order directing them to be placed in the double lock and he must have known

where they were at the time when they were so ordered. There was no question of asking the Asstt. Returning Officer to give that information. The Returning Officer must have also known that the ballot papers which were considered valid by the accounting clerks are not taken to the Asstt. Returning Officer for orders and he could not ask the Asstt. Returning Officer as to how he had counted so many ballot papers as valid when there were, in fact, invalid for a double marking. The existence of such a draft indicates that Shri Subramaniam himself was making these drafts without talking to the Returning Officer about them. He even was not certain whether the discoveries made on the recount were due to the mistake committed by the Asstt. Returning Officer and his staff at the first count or it was due to tampering of ballot papers after the first count and before the recount. In his statement however, Shri Subramaniam has undoubtedly expressed his opinion in examination-in-chief that the ballot papers had been tampered with before the recount. But in cross-examination he has given his reasons for holding that opinion. He has expressed himself, "I consider it safe to reach the conclusion about tampering without making any such enquiry because it was apparent on the fact of it that the ballot papers were tampered. What I mean by 'Apparent' is that the initial marks being thick with too much of ink and another mark very faint with the Smudge in the former case at the opposite side marks with the same seal simultaneously the second mark will be generally faint another reason is that the counting is done by the counting Supervisor with the assistance of two clerks and in the presence of counting agents of the parties. Such a large number of doubtful ballot papers cannot be counted in favour of a single candidate without any of the persons noticing it. No other reason strikes me.....My conclusion that so many ballot papers with double marks could not have escaped the scrutiny is based on the assumption that the A.R.O. also scrutinised the ballot papers..... the counting Supervisors and counting assistants were Government Officials and I do not expect them to pass such a large number of ballot papers as valid although on the face of it they were invalid. If the counting Supervisors and the counting clerks at some of the tables were not honest and if the A.R.O. did not scrutinise and counting agents did not look on them my conclusion may be incorrect. Thus the opinion of Shri Subramaniam which he seems to have formed about the ballot papers having been tampered with between the first count and the recount was based upon supposition and inferences without trying to know the circumstances under which the counting of these two segments had taken place on the 27th and 28th of February, 1962, which have been stated above. No other evidence has been placed to indicate that the Returning Officer had been ordered not to declare the result upon this evidence, I am not satisfied that the Returning Officer declared the result contrary to any direction given to him for not declaring the result. All that can be said is that Shri Subramaniam himself expected the Returning Officer to make such a report and ask for permission not to declare the result. But that does not mean that there was a direction on behalf of the Chief Election Commissioner under its power of superintendence under Art. 324 of the Constitution not to declare the result. In the absence of such a direction, the Returning Officer was bound to declare the result. There was no illegality in his declaring the result on the 11th of March, 1962.

Having considered the evidence regarding the effort to temper with the ballot papers, it remains to consider the circumstantial evidence appearing from the ballot papers themselves and whether that circumstantial evidence is sufficient to prove that they had been tampered with. There being no direct evidence either of tampering or even of an attempt to tamper, the circumstantial evidence must be consistent only with the theory of the ballot papers having been tampered with after the first count and before the recount. If the special features which have been pointed out on behalf of the petitioner can exist otherwise than by the tampering of ballot papers after the first count then those features would not be sufficient to uphold the theory of tampering. I will now start to consider the evidence regarding these special features appearing from the ballot papers themselves. In respect of about 800 of those ballot papers, the evidence of P.Ws 4, 5, 6 and 7 has been produced to state that they would not have passed these ballot papers at the first count as valid if they had all the marks at that time which they bore at the time of evidence. The second category is of 7 ballot papers of blind voters and on which marks had been placed by the Polling Officer according to the direction of the blind voters. The last category is of 234 ballot papers which were improperly accepted at the recount as valid votes for Shri Ram Ratan Gupta when they were not found to have any mark on any case of a candidate at the first count and had been rejected either on account of having no voting mark or on account of having marks on the blank space. There is also the evidence of the expert Shri C. T. Sarwate P.W. 11, who has, after preparing enlarged photographs of some of the ballot papers, come to the conclusion that the ballot papers had been tampered with. Shri Bhadkamkar, the

election agent of the petitioner has also deposed in his statement about the ballot papers that had been tampered with. His statement is not that of an eye-witness but he has expressed his opinion and has given his reasons for holding that opinion. I will start with the statement of Shri Bhadkamkar.

Shri Bhadkamkar, the election agent of Shri N Dandekar has expressed his opinion and has also given the numbers and details of the ballot papers, which according to him, were tampered with and over which were originally made by the voters. But it is a matter of his opinion and the evidence is not admissible as such. All that can be or use out of his statement, are the reasons which he has given. In his statement, the first as reason he has given for coming to that conclusion is "such large number of double marked ballot papers could not have been included in the bundles of valid votes of the petitioner". This fact that a large number of invalid votes were counted for the petitioner does not necessarily lead to the conclusion that they were tampered with. It is equally possible that some of the clerks who were responsible for the counting deliberately added the voting papers as valid votes for the petitioner Shri N. Dandekar whenever they found a clear mark in his star cage irrespective of other marks on it. This statement is generally true but whenever the voter who had been given an cage were lightly impressed and generally did not show a full mark or the seal. This statement is generally true but whenever the voter who had been given an inked seal, first puts the seal on the star mark and then puts the seal on any other space, the second mark is bound to be lighter, and it depends upon where the seal is put whether the mark impressed the full seal or only a part of it. Simply lightness of other marks does not indicate that the other marks were not made by the voter and had been subsequently put upon it. If the other marks had been put upon the ballot papers by some person subsequently for the purpose of spoiling the vote there is no reason why he could not put a full seal mark and why every time his seal could be lightly inked. All that can be assumed is that after inking his seal once, he must go on putting several marks on several ballot papers but then the first mark made by him would be fully inked and the subsequent few marks would be lighter. But out of about two thousand ballot papers which have been rejected, most of them contained one mark deeply unpressed and the other marks always lighter and that is consistent, to my mind, only with the fact that the voter who had only one inked seal with him having put one mark could only put other lighter marks on the ballot paper and the fact that most of the ballot papers contained only lighter marks apart from one which is deeper instead of leading to the conclusion that the lighter marks are forged once, leads only to the inference that they were marked by the voter himself. The lightness of the second and the third marks would depend upon the time which the voter took in making the second and the third marks after making the first mark and no inference can be drawn from this circumstance that the subsequent marks were a forgery. That fact that the subsequent marks were only half or quarter seal also leads to no such inference. Another reason given is that when lighter marks on different ballot papers are compared with each other they are similar. The statement is too vague marks on different ballot papers are neither similar in the extent to which they have been impressed nor are they similar to each other in depth of ink. With regard to the ballot papers which were originally rejected as having no voting mark or having a mark on blank area but on which subsequently a valid voting mark was discovered at the recount, the only reason given by the witness for contending that those marks are forged ones is that they were lightly impressed and that they could not have been wrongly rejected by the Assistant Returning Officer. The whole contention of the witness with regard to these 236 ballot papers is based upon the infallibility of the staff of the Assistant Returning Officer while rejecting these ballot papers. I have carefully looked into many of these ballot papers, and I find that the rejection noted by the Assistant Returning Officer at the time of the first count was certainly not very careful for instance, ballot papers Exts. R 7/5 and R 7/6 had no voting marks at all but they had been rejected by the A.R.O. under his signature as R.M.V. i.e. rejected for multiple voting. Similarly voting papers Nos. R 30/12 to R 30/23 and R 34/e to R 34/11 have been so wrongly rejected. Again voting papers Nos. 32/ and 32/2 which ought to have been rejected for multiple voting were rejected for having marks on blank area. Similar is the observation with the voting paper Nos. 56/4-56/7 and 57/ 57/7 Voting papers Nos. R 30/1 to R 30/1 had marks in the cages of more than one candidate but they have been rejected on the ground of the having no marks. Again ballot papers Nos. R 53/1 and R 53/2 were rejected for multiple voting but these exist no mark in the cage of any candidate. There were marks on the blank area and should have been rejected on the ground of marks on the blank area. I am, therefore, satisfied that even the rejections which were supposed to have been made by the Assistant Returning Officer himself after scrutinising the ballot papers

brought to him by the Supervisors of different tables for orders were not rejected after careful going into each ballot paper but, as amended for by the learned counsel for the petitioner, were simply handed over to the Assts. who hurriedly put some rejection seal upon them on the reverse side of the ballot papers and the same were signed by the Assistant Returning Officer on the faith that his clerks had done the work carefully. It is also to be noted that the situation in which the Asstt. Returning Officer was did not permitted a more careful examination. After calculating the number of ballot papers both for the parliamentary and the assembly segments which he had to reject by his order and the time which had actually been taken in doing the whole work of rejection, it appears that he had to dispose of one ballot paper in about three seconds. Placed in such a situation he could not have given a greater personal attention than merely signing below the seal put by his assistants and the assistants also in that hurry could not have done better than of putting some seal rejecting the ballot papers which had been brought by the supervisors as rejectable ballot papers. The learned tribunal observed, when its attention was brought to these mistakes by the Assistant Returning Officer, that the ballot papers were, in any case, rightly rejected though the reason for rejection may be wrong. But the learned tribunal forgot that the wrong reason for rejecting the ballot papers leads to the conclusion that rejections were not carefully done and this gives a scope for these marks also which have been detected at the recount. 236 ballot papers which had originally been rejected either having no mark or as having a mark on blank space in fact contained a mark in the bull cage. In this stage of careless rejection it is not possible to say that simply because these ballot papers had been rejected at the time of the first count they could not possibly have had a mark in any particular cage. That the theory of the ballot papers having been tampered with has been developed as a matter of afterthought is clear from the fact that when these ballot papers were being rejected by the Returning Officer at the time of the recount, no objection was taken before him that particular marks on ballot papers were forged marks and were not marks made by the voters. This fact has been admitted by the witness when he says, "I did not object to the Returning Officer. After the appearance of these ballot papers I was so shocked that I did not think of any objection and subsequently the petitioner had arrived in the hall". Another reason given by this witness is that 18 packets out of the Gonda East and Gonda West segments were originally found missing from the bags of these segments. They were subsequently searched out by Shri A. S. Misra, who said that they had been packed wrongly with the assembly ballot papers, but no ballot paper in these packages was found to be wrongly counted at the first count. From this, it is sought to be inferred that because these packages had been missing from their proper bags, therefore, they had not been tampered with and the inference that these packages which remained in the proper bags were tampered with. I am unable to accept this contention. On the contrary, the fact that as many as 18 packages relating to 18 polling stations remained outside the strong room for several days before they were brought back for recounting and were found not to be tampered with at all is proof of the positive fact that the officers were not interested in touching these ballot papers and that they were in the state in which they had been after the first count. It is an admitted fact that in each of these segments of the parliamentary constituency, these features were not discovered among the ballot papers relating to all the polling stations. The explanation for discovery of these wrong countings in particular polling stations, given by the learned Advocate General on behalf of the appellant is that particular clerks at particular tables who were interested in increasing the number of votes for Shri N. Dandekar were responsible for this wrong counting and therefore, those particular polling stations which went for counting to those tables and were thus wrongly counted at the first count disclosed these special features at the recount. This is a very cogent explanation and simply because wrong counting was done in some of the polling stations, cannot lead to the conclusion that the ballot papers in some of the polling stations had been tampered with while the others which even though remained in the hands of the very persons whom the petitioner suspected as forgers, had remained untouched.

In this connection it may also be observed that in the applications made on behalf of Shri Ram Ratan Gupta wrong counting was suspected particularly in Gonda North and Mankaur segments of the constituency because voting for Shri Ram Ratan Gupta was the lowest in those segments of the constituency. If those very persons had thought of tampering with the ballot papers they would have naturally laid their hands on the ballot papers of these segments. All these ballot papers were placed at the same place and there is no reason why they let these segments remain untouched and picked up other segments. On the other hand, it is contended by the learned Advocate General that in Gonda East and

Gonda West polling in favour of the Congress candidate was heavy and therefore Shri Dandekar was losing. In such a situation, the clerks who were sympathetic with Shri N. Dandekar started placing every ballot paper in which there was a clear voting mark in the star cage in his package, if for no other purpose than merely to reduce his defeat, and since in those two segments the Congress candidate was winning, nobody cared to scrutinise carefully the voting papers which were counted as valid votes in favour of Shri Dandekar and the mistakes, therefore, remained unchecked till the time of the recount. It is also noteworthy that the counting of these segments was done in the combined office on 27th and 28th February 1962 where due to diffident light and other difficulties, checking was not possible. I am, therefore, of the opinion that the reasons given by the witness for thinking that the ballot papers had been tampered with are wholly insufficient to come to that conclusion and he was not right in having suspected tampering of ballot papers.

The next witness, who may be considered in this connection is Shri C. T. Barwate. He has been produced as an expert. The only matter for consideration in this case is whether certain seal marks existing on the disputed ballot papers had been made by the voter himself or had subsequently be placed by somebody else. This matter is not one on which an expert's opinion is at all admissible under the Evidence Act. The statement of this witness therefore, merely as the opinion of an individual is inadmissible. However, on the basis of the reasons which he has given it may be considered whether his conclusion was right. He has examined only some of the ballot papers which are in dispute and which he has mentioned in Annexure 1 to his report. About this Annexure he says that he examined the ballot papers by naked eye and also by lenses and microscope wherever necessary. These ballot papers bore two or more marks of voting. He then observed that the marks upon the cages other than the star cage were not made at the time when the mark at the star cage was made. The first reason for this conclusion given by him is that a large majority of non-star voting marks are faint. This circumstance I have already considered in the statement of Shri Bhadkanmkar and it leads to no such conclusion. The second reason given by him is that they showed a lack of continuity. By "continuity" he means that the depth of ink in the first, second and third marks should go on reducing in a continuous way by degrees and not suddenly. But that factor depends upon whether the person who makes second or third mark does so immediately after making the first mark or waits a little so that the ink gets dried up. He himself says that when marks are made in quick succession the difference in depth of the ink should not be very much as exists on most of these ballot papers. If a voter has placed a mark upon the ballot paper and then thinks of placing another mark, he is most likely to hesitate and would think over twice before putting another mark. This would take a little time and the ink that had already materially exhausted after the first mark will naturally be not deep when the second or third mark it made. This reasoning also does not lead to the conclusion to which the witness has come. He also admits that in some voting papers, mark on non-star cage is almost as deep as that on the star cage which would indicate that in some cases at least the second mark was made in quick succession and he admits that in this case it will be difficult to determine that the second mark was not made at the time when the first mark was made. But then he goes on to say that in some of these cases, star marks left a reflected impression after folding the ballot papers while the non-star marks left no such impression and from this he infers that the second mark was made subsequently and not by the voter. This again is a wrong reasoning. If the seal contains too much of ink and on the first mark the ink is deposited sufficiently to leave an impression on the other side of the ballot paper, if the ballot paper is folded soon after it does not mean that the second impression made by the same seal after the earlier ink had exhausted will also have sufficient ink to make the impression on the other side of the ballot paper after it is folded. Another reason for coming to the conclusion that the star mark and non-star mark were not made by the same person at the same time is that the cross-inside the seal is not parallel in both the marks so that either the paper or the seal has turned when the second mark is made. This is so in some of the voting papers but there is nothing to indicate that the voter himself could not turn either the seal or the paper after putting one mark. In cross-examination he has admitted with regard to these features, "The time in which ink takes to dry would depend upon the ink itself, humidity and temperature. There are inks which dry in two or three seconds.....If a voter took an interval of about six or seven seconds between two impressions made by him and the ballot paper was then folded it is likely that the second impression would give reflected impression and the first may not. If the ink was a quicker drying one the interval will be shorter. If the impressions are made by the voter not in

quick succession but with an interval mentioned above by conclusion that the only explanation for absence of one impression shows that the "non-star voting mark has been impressed subsequently" would not be correct. The interval before the ink is dry on the rubber stamp itself may be 30 seconds for partial drying, it may even be 3 or 4 minutes before the ink totally dries up. If there are two seals put on ballot papers one of them nearer the fold than the other it may happen on folding that the impression of one is reflected and of other is not..... In my opinion, and in my evidence I have not expressly taken these factors into consideration". In view of this admission the probative value of the reasons given by this witness is practically nil.

In this connection another aspect of the case becomes very material. These special features are being pointed out in those particular ballot papers which have been selected by the petitioner as having been tampered with. But if there are several marks on one ballot paper, one being darker and full and the others being fainter and incomplete on other ballot papers, which have been rejected for multiple marking, it would be quite clear that this feature is not such a special feature in those particular ballot papers only so as to lead to any inference of tampering. More than three thousand ballot papers in this parliamentary constituency alone have been rejected for multiple marking and a number of ballot papers, if not exactly equal to those must have been rejected in the assembly constituency also. It was necessary for a proper decision on these aspects that all these ballot papers also should have been brought on the record and examined for comparison. Shri Sarwate has admitted. "I would have liked to examine unquestioned ballot papers but I was told they were not available. I had no opportunity to examine any of the unquestioned ballot papers of double marks scientifically". Not only that, but on behalf of Shri Ram Ratan Gupta application after application was made for permission to summon all the rejected ballot papers for comparison. Three such applications have been printed and all were repeatedly rejected by the tribunal on the ground that the other ballot papers were irrelevant. The first such application was made on the 24th of July, 1963 and in paragraph 17 of this application all the used ballot papers of Gonda North, Mankapur and Mahadeva assembly segments of 34-parliamentary constituency were asked to be summoned. The second application was made on the 4th of September, 1963 again for summoning of some of the ballot papers and again the request was repeated by an application dated the 9th/10th of September, 1963. In this application detailed reasons were given that these ballot papers were essential for comparison. But all these applications were rejected on the ground that these ballot papers were wholly irrelevant. I am unable to see how those ballot papers were considered to be irrelevant when such circumstantial evidence was to be taken into consideration. Some voters who had voted for the parliamentary constituency had also at the same time voted for the assembly constituency and it was very relevant to see how the voters had behaved in marking those ballot papers. I am unable to see any force in these general features as disclosing necessarily that these ballot papers had been subsequently tampered with.

This witness has also prepared enlarged photographs of some of the ballot papers. He says that in these ballot papers he had enlarged 36 times its impression. After enlargement it was visible to the naked eye, that there was a break in the non-star seal in all these ballot papers but the same break was not visible in the star seal. It is apparent from a look at these ballot papers, which the witness has selected for enlargement, that the star seal has a much larger quantity of ink than the non-star seal which has disclosed a break. The break itself is so fine that it is not visible to the naked eye without enlargement and had to be demonstrated by enlarging the impressions thirty six times. Such a fine break in the seal would naturally disappear if the seal is heavily inked and it is unfortunate that this witness had selected only those cases for enlargement in which the star-seal was heavily inked. It is impossible, therefore to come to the conclusion that the same seal having a slight break was not used for making both the marks on the star and on the non-star part of the ballot papers. I have, however, examined carefully all these ballot papers and I am of the opinion that these breaks are not exactly similar in each case and also that in most of the enlargements the break is not visible in light seal marks as well which could indicate that all the non-star marks were not made by a forger hurriedly. For instance Ext. P. 45/38 shows a break in the arm of the cross at a much greater distance from the arch. In Ext. P. 35/57 the break on the right side of the arm in the arch is also not similar. In Ext. P. 55/57 there is a distinct protruding out of corner which does not exist in Ext. P. 55/38. Again the break disclosed in Ext. P. 55/48 is of entirely different character. There is a break right from the arm upto the arch and there is a regular channel from the

arch to the arm. The break at the arch is much less wide than at the arm. The very formation of the break is entirely different. I am, therefore, unable to agree with this witness when he says that this characteristic break is similar to each other in non-star marking every time and that it does not exist at all in the star mark. I am, therefore, of the opinion that these general observations with regard to the character of the impressions made upon the ballot papers are wholly insufficient to come to the conclusion that all the ballot papers which had been found at the recount to have been wrongly counted at the first count must be deemed to have been tampered with and on that basis the result of the first count should be accepted as the only correct result. The evidence of Shri Sarwate relates only to those ballot papers which he examined and about which he has mentioned in his two lists and his conclusions even with regard to them are not sound.

In this connection then remains the consideration of the evidence of four witnesses, who claimed themselves to have been engaged in the work of counting on the 27th and 28th of February, 1962. These four witnesses are P.Ws. 4 (Dasrath Pd. Shukla), 5 (Bahadur Singh), 6 (Ram Niwas) and 7 (Hanuman Pd.). I have examined the evidence of these witnesses in connection with the deficiency of light on the 27th of February, 1962, in counting hall and I have come to the conclusion that two out of these witnesses namely P.W. 5 (Bahadur Singh) and P.W. 6 (Ram Niwas) were not at all engaged in the work of counting and have wrongly claimed to have worked as such. The reasons need not be repeated. Therefore only two witnesses remain to be considered. P.W. 4 (Dasrath Pd. Shukla) was the counting supervisor. All that he stated in his statement was 'we were doing the work of sorting very carefully. The doubtful ballot papers I took myself to the A.R.O. when I placed the doubtful ballot papers he examined them. 'He was then shown some of the ballot papers which must have passed through his table according to his own statement. He stated that the ballot papers which contained multiple marks could not have been counted at his table as valid for Shri Dandekar. He was then shown a few ballot papers which had been rejected at the first count as having no marks but were found at the time of the recount as having on the bullcage and he stated that he could not have put those ballot papers as doubtful ones and would not have taken them to the A.R.O. if they had a mark on bull cage at the time of the first count. Similar is the statement of P.W. 7 (Hanuman Pd.). He was a counting clerk and he also states that he would not have committed the mistakes which were found. But these statements lead us nowhere. It only means that these two witnesses did not deliberately place these ballot papers in the wrong box. If mistakes had been made, they were not made intentionally and it was not possible for these witnesses in any case to admit even if they did deliberately make wrong counting, that they had done so. The evidence with regard to these few ballot papers cannot lead to any general conclusion and even if these few ballot papers about which these witnesses have spoken are excluded from counting, they would not affect the result.

The last group of witnesses on this point are P.Ws. 12 (Ram Sarup), 13 (Raghunandan Singh Yadav) and 14 (Horilal). They have given their evidence with regard to seven ballot papers which according to them had been marked by them on behalf of the voters. They have stated that they did not put more than one seal mark on the ballot papers. P.W. 12 (Ram Sarup) admitted that in his diary he had noted "I placed marks at places according to the statement of the voters" I have examined his diary and I find that in his diary wherever he mentions the place where the mark is put, he has put it in plural but wherever he mentions the seal by which the mark is made he has used it in the singular word. His diary is, therefore, consistent with his having placed more than one mark on each ballot paper according to the direction of the voter. His statement, therefore, goes further than what his diary indicated. On behalf of Shri Ram Ratan Gupta a letter was tried to be produced which this witness was supposed to have written for the information of Raja Sahib of Mankapur that he had given his evidence according to his desires and that his work should be done. This letter was not permitted by the tribunal to be brought on record on the ground that the witness had merely corroborated his diary and it was, therefore unnecessary to go into that question. I am unable to see how this witness has merely corroborated his diary. His diary was certainly equivocal if not entirely in favour of the allegation of Shri Ram Ratan Gupta. It is his statement alone which clarifies the position that he put only one rubber seal impression on each ballot paper. The statement of this witness is, therefore, not very reliable. The next witness is P.W. 13 (Raghunandan Singh Yadav). In his examination-in-chief he stated that, "I affixed the voting mark only once on this ballot paper according to the wish

of the voter". But subsequently this witness objected that he had used the word "perhaps" while making that statement and wanted to correct his statement but the tribunal did not permit him to do so as the tribunal thought that he had not used the word 'perhaps' when giving that statement. In cross-examination, however, this witness has admitted that if a blind voter had insisted that he should put two marks, he would have done the same. He further admits, "I do not remember if I had fixed two marks but I say that I have fixed one mark but (as) that is the rule". The statement of this witness is, therefore, not convincing. The last witness is P.W. 14 (Hori Lal). His statement refers to only one ballot paper. In his diary he does not say that this ballot paper was marked by him on behalf of a blind voter, but he merely mentions that the voter was not able to see clearly. There was an objection against her being permitted to vote by the congress candidate but it was withdrawn and so she was permitted to vote. **This diary does not mention that upon the ballot paper of this voter the witness put the mark himself.** His evidence is also, therefore, not conclusive. I, therefore, find that there is no evidence on behalf of Shri Dandekar which could conclusively prove that any ballot paper was in a state at the time of the recount in which it was not at the time of the first count.

Having disposed of the question of evidence on facts, I now turn to the legal aspects of the matter. Admittedly, the election petition is not based on any corrupt practice. The only ground on which the election of the appellant is sought to be set aside in the petition is that there was an extensive tampering with the ballot papers after the first count and before the recount as a result of which 1,780 valid votes in favour of the petitioner in Gonda East segment of the parliamentary constituency and 130 valid votes in Gonda West segment of the parliamentary constituency had been wrongly rejected at the recount. Similarly, 150 ballot papers in Gonda east and 50 ballot papers in Gonda West segments of the parliamentary constituency were wrongly counted as valid votes in favour of the appellant at the recount which had been rightly rejected at the time of the first count. It was also contended that the declaration of the result was illegal as it was against the clear orders of the election Commission not to declare the result. I have already dealt with the last point and I have held that there was no such order. The only other ground which remains is covered by section 100(1)(d)(iii) of the Representation of the people Act, 1951, namely, "If the Tribunal is of opinion.....that the result of election in so far as it concerns a returned candidate has been materially affected..... by the improper reception, refusal or rejection of any vote or the reception of any vote which is void."

In order to come to a finding that a particular vote has been improperly received by the returning officer or has been improperly refused by him, the tribunal ought to be able to say in relation to a particular vote that this vote ought not to have been admitted by the returning officer or ought to have been admitted as a valid vote by the returning officer. The question therefore arises what is the scope of the enquiry before the tribunal in order to come to that conclusion. The contention on behalf of the learned Advocate General is that the scope of enquiry before the tribunal was to find out whether the action of the returning officer was correct or not. The tribunal had, therefore, to place itself in the position of the returning officer and therefore the scope of enquiry before the tribunal was the same which could be before the returning officer. Therefore since the returning officer could decide as to validity or invalidity of a vote merely upon having a look at the voting paper and observing the way in which it had been marked, the tribunal also could not go further and could not enter into an elaborate enquiry with the aid enlarged photographs and possibly the use of chemicals for testing the inks and comparison of thousands of ballot papers put side by side. If such an enquiry is permitted by the tribunal, there is no reason why, in order to come to the conclusion whether a particular voting paper is valid or not, the returning officer should also not be forced to make an elaborate enquiry of the same nature and if it is permitted the declaration of the results of elections would become practically impossible. The contention of the learned counsel therefore, is that the tribunal in the present case had gone much beyond its powers to enter into an elaborate enquiry in order to find out whether particular marks on the ballot papers were made by the voters at the time of voting or they had been subsequently put on the ballot papers. Such an enquiry, according to him, was beyond the jurisdiction of the tribunal. On the other hand, on behalf of the petitioner it has been argued that the enquiry before the tribunal was in the nature of the original suit and all kinds of evidence could be entertained by the tribunal to determine the truth in a particular case and to find out whether in fact a particular ballot paper was liable to be rejected and

if it was wrongly admitted by the returning officer, or it was a valid vote and ought to have been admitted and not rejected by the returning officer. Learned counsel for both the sides have relied for their respective proposition on *Veluswami Thevar Vs. Raja Nalnar* and others, 17 Election Law Reports P-181 (S.C.). That was a case where the question involved was about the improper rejection of a nomination paper and the objection before their Lordships of the Supreme Court was that the tribunal could not entertain a ground for rejecting the nomination paper which ground had not been raised before the returning officer. It was held by their Lordships of the Supreme Court that if the ground was such which could have been raised before the returning officer, it was held by their Lordships of the Supreme Court that if the ground was such which could have been raised before the returning officer, it could also be raised before the tribunal. One party relied upon that part where their Lordships have held that the tribunal could also entertain the pleas which the returning officer could entertain and contends that the tribunal can only consider evidence which the returning officer could entertain while the other party relied upon the observation that the tribunal had to decide regarding the validity of the nomination paper and not about the correctness of the decision by the returning officer and contends that in the present case what the tribunal had to decide was whether a particular nomination paper was valid or invalid and not whether the decision of the returning officer was valid or not on the basis of the evidence before it. In the first place, I think that this point is not very material after the findings of fact given by me above but if a decision is necessary, I personally think that there the question is one of evidence and considering the practicability of the matter, I am of opinion that the enquiry of the nature gone through in this case cannot be permitted and is not contemplated by law. Here what is sought to be found is as to what was the state of marking on the ballot paper exactly at the time when the voter left that ballot paper and after determining that state to treat that to be the only valid mark on the ballot paper and to ignore all other marks that may exist on the ballot paper. If such an enquiry were permitted, the result would be that the best evidence on the point, namely, the voter himself will have to be produced as to how he marked the ballot paper and left it in the ballot box. All other evidence on this point would be merely circumstantial and not conclusive. Such an enquiry would completely violate the principle of secrecy of voting and I am unable to accept that the legislature ever intended to permit such an enquiry and then to count each vote on the basis of the finding of the state of the ballot paper when the voter left it. The intention of the legislature is made apparent by the provisions of section 58 of the Representation of the People Act, 1951. This section provides for a fresh poll in the case of tampering of ballot boxes. The relevant part of the section is as follows, "If at any election.....any ballot box used at a polling station is damaged or tampered with to such an extent, that the result of the poll at that polling station or place cannot be ascertained..... the returning officer shall forthwith report the matter to the Election Commission Thereupon the Election Commission shall after taking all material circumstances into account, either declare the poll at that polling station or place to be void etc. This section, to my mind, makes it clear that in case tampering of ballot boxes—which must include tampered with ballot papers for otherwise a mere tampering of ballot boxes would be of no sequence so far as the election is concerned—is discovered, if it is very minor, it has to be ignored and if it is to such an extent that the result of the poll at the polling station cannot be ascertained, then the whole election of that polling station has to be declared void. There is no provision in the Act saying that the tampered votes are to be scrutinised in order to find out which part is tampered and which part is not tampered and then to count that vote on the basis of the finding of the non-tampered part. Rule 55(4) of the Conduct of Election Rules, 1961, also is to the same effect which is as follows, "If the returning officer is satisfied that any ballot box has in fact been tampered with, he shall not count the ballot papers contained in that box and shall follow the procedure laid down in section 58 in respect of that polling station" It is therefore clear that the intention of the legislature was not to count the ballot papers which were suspected of having been tampered with and this could exclude an attempt to find out what is the tampered part and what is not the tampered part and to count the vote on the basis of the non-tampered part. After providing in rule 55 mentioned above, for non-counting of suspected ballot papers, rule 56 thereof gives instructions to the returning officer as to what ballot papers are to be rejected under heads (a) to (h) of sub-rule (2). This rule relates obviously to unsuspected votes. Then follows the first proviso which is not relevant and the second proviso is as follows, "provided further that a ballot paper shall not be rejected merely on the ground that the mark indicating the vote is indistinct or made more than once if the intention that the vote shall be for a particular candidate clearly

appears from the way the paper is marked. "To my mind, this proviso refers only to those voting papers which are not suspected of having been tampered with and merely deals with those cases where marks made by the voter himself are not clearly in the cage of one of the candidates, but "if the way in which the ballot paper is marked" shows his intention clearly then the mere fact of the mark being indistinct or having been made more than once will not render the ballot paper invalid. It is not possible to read in this proviso the power in the returning officer to ascertain which mark has been made by the voter and which of them has been a result of the ballot paper having been tampered with by outsiders. To my mind, therefore, the whole enquiry before the tribunal, in an attempt to discover which part of the ballot paper contains a mark made by the voter himself and which is not, and to count the vote on the basis of the decision as to which is the original mark, is completely against law. All that the tribunal had to find out was whether tampering of the ballot papers was to such an extent that the result could not be ascertained and in that case the whole result should have been set aside and a repoll ordered. But after the findings given by me above, even this procedure was not called for. In any case, the finding of the tribunal that because some of the ballot papers were according to it proved to have been tampered with, therefore, all the ballot papers which had been counted at the first count for the petitioner must be deemed to have been validly counted, is an unsupported finding. Apart from the ballot papers which are being challenged as tampered with, a number of ballot papers were brought to our notice which bore no mark in any case of any candidate but had not been rejected at the first count and so must have been counted as valid votes for some candidate which cannot be ascertained now. But those mistakes were discovered at the recount and were rejected either on the ground of having no voting mark or on the ground of having a mark in blank space. Some of these exhibits are as follows: "R-12, R-13 2, R-13/3, R-13/4, R-13/5, R-13/6, R-16/1 to R-16/3, R-19, R-28/5, R-32/2, R-36, R-38/2, R-45/2 and R-59". Even if these particular votes in respect of which direct evidence has been given by P.Ws. 4, 7 and 12 to 14 are excluded as tampered ballot papers, the result declared at the recount will not be altered.

In the petition a prayer was made that after setting aside the election of the successful candidate, the petitioner be declared to have been duly elected. The tribunal has passed that order. The successful candidate gave a notice and filed a petition under section 97 of the Representation of the People Act, 1951 and has given evidence to show that the petitioner himself was guilty of corrupt practice and if he had been elected as a candidate and his election had been challenged on the ground of corrupt practice, now raised, his election would have been set aside. In view of the finding in the election petition itself, I do not consider it necessary to examine this aspect of the case as the election of the successful candidate is itself being upheld as valid and therefore, no question of going into the recriminatory petition arises.

The result therefore is that the order of the tribunal setting aside the election of the appellant is set aside and the appeal is allowed with costs. The election of the appellant is held to be valid.

Along with this appeal, as stated above, a number of appeals and writ petitions have been filed by the officers against whom remarks have been made by the tribunal in the course of its judgment. Since the judgment of the tribunal itself has been set aside by me, I do not find it necessary to again consider the same facts separately and give a decision regarding the conduct of these officers. Suffice it to say that the conduct of none of these officers to my mind, has been proved to be either *mala fide* or in any way, derogatory to what their conduct ought to have been. Some of these officers filed appeals also and a question had arisen whether the appeals lie at the instance of these officers against the remarks made in the judgment of the tribunal. An elaborate argument was heard but I need not consider all the details. In my opinion since no corrupt practice was alleged in the election petition, the question of naming any person as guilty of corrupt practice does not arise and, therefore, it is not possible to hold that these officers were the persons named as having been guilty of corrupt practice and they had, therefore, a right of appeal. But in the writ petitions, they could certainly raise the question that the remarks had been made against them without giving them an opportunity of meeting the allegation against them. On the other hand, it was contended that the remarks made against the officers were a necessary part of the fabric of the judgment and, therefore, could not be expunged from it. Since, however, the whole judgment of the tribunal has been set aside, I do not consider it necessary to decide these matters either. The writ petitions and the appeals filed by the officers mentioned in the beginning of this judgment are dismissed as infructuous and unnecessary and parties will bear their own costs.

One writ petition No. 496 of 1964 which has been filed on behalf of the State Government, deserves special consideration. In this case, there was absolutely no evidence to the effect that the State Government was, in any way, interested in supporting the candidature of any of the candidates nor was it necessary for the tribunal to come to the conclusion on the question raised in the petition whether the State Government had encouraged the officers so to act as to make the appellant ultimately successful in the election. The tribunal in paragraph 169 of its judgment observed as follows. "Shri C. M. Nigam was the District Magistrate, Gonda. During the election he was also the returning officer for 34-Gonda Parliamentary constituency.....At the time of the election there were departmental charges pending against him..... He was instrumental in bringing about the success of respondent no. 1 by corrupt contrivance and the *quid pro quo* was his promotion as Commissioner of Faizabad in November, 1962 after the election although he was previously superseded." This remark necessarily leads to the inference that the State Government was pleased with Shri C. M. Nigam on account of his having acted in a corrupt manner for the success of respondent no. 1 and as a reward for this corrupt act had raised him to the position of a Commissioner which had been denied to him earlier on account of departmental action. There is no evidence on the record whatever that the Government had at any time either encouraged or approved of any corrupt act by Shri C. M. Nigam. There is also nothing on the record to indicate that the promotion of Shri C. M. Nigam as Commissioner was a result of this improper action as held by the tribunal. Such a remark against the Government of the State is unsupported by anything on the record and is wholly irrelevant for purposes of the judgment in which it is incorporated. The State Government was not a party to the election petition and was not given an opportunity to explain how and why Shri C. M. Nigam was promoted after the election had been declared. In fact, in this writ petition on behalf of the State all the details have been given indicating that the decision to promote Shri C. M. Nigam as Commissioner had been taken much before the counting of this election actually started and the whole remarks quoted above contained in paragraph 169 of the judgment is entirely uncalled for. I think that paragraph 169 of the judgment of the tribunal must be expunged.

The writ petition on behalf of the State is consequently allowed with costs and paragraph 169 of the judgment of the tribunal is quashed.

19-12-1966

Sd. B. D.

Hon. Takru, Ja,

I agree with orders proposed above and have nothing to add.

Sd. J. N. TAKRU.

19-12-1966.

First Appeal No. 305 of 1964 connected with First Appeals Nos. 316, 326, 328, 341 of 1964 and writ petitions Nos. 494, 495, 496, 5173, 5174, 5216 and 5286 of 1964.

Hon'ble J. N. TAKRU, J.

Hon'ble B. Dayal, J.

By the Court

In the result First Appeal No. 305 of 1964 is allowed with costs and the order of the Tribunal in setting aside the election of the appellant is quashed; writ petition No. 496 of 1964 is also allowed with costs and paragraph 169 of the judgment of the Tribunal is quashed while first Appeals Nos. 316, 326, 328 and 341 of 1964 and writ petitions Nos. 494, 495, 5173, 5174, 5215 and 5286 of 1964 are dismissed and the parties are directed to bear their own costs.

Sd. B. D.

Sd. J. N. T.

19-12-1966

[No. 82/339/62.]

By Order,

K. S. RAJAGOPALAN, Secy.